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REASON

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August/September 1997

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By Virginia I. Postrel

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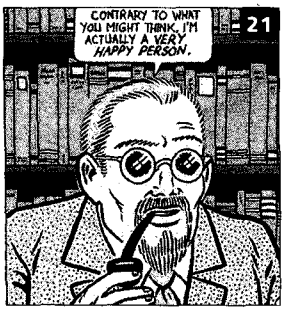

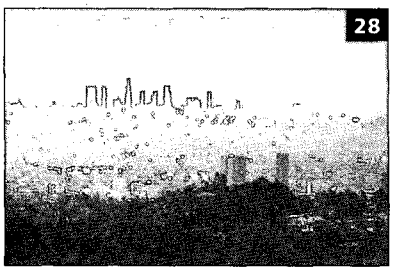

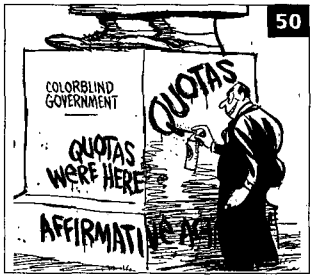

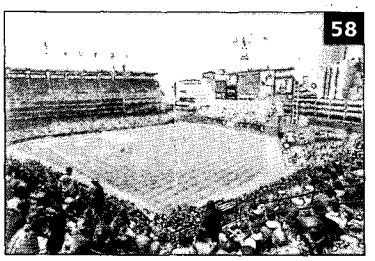

Editorials

4 Capital Cynics by Virginia I. Postrel
Who do they think they're fooling?

8 Pricing Pencils by Michael W. Lynch
The feds enter the superstore wars.

Features

21 The Embarassment of Riches by Brian Doherty
Can punk rock and alternative comics make peace with capitalism?

28 Polluted Science by Michael Fumento
The EPA's latest air pollution proposals have a huge price tag and dubious foundation.

43 Thy Neighbor's Keeper by Amy L. Sherman
A case study in moving welfare recipients to work.

Columns

47 Taxing Times by Daniel J. Mitchell
The flat tax–sales tax wars could eventually leave the status quo standing.

50 Courting Trouble by Michael W. Lynch
Activist judges are no match for lawbreaking bureaucrats.

53 Environmental Injustice by Henry Payne
How green activists deny jobs to poor blacks.

Books

58 Edifice Complex by Rick Henderson
Major League Losers: The Real Cost of Sports and Who's Paying for It, *by Mark S. Rosentraub*

60 A Thin Line Between Love and Hate by John J. Pitney Jr.
Affairs of State: The Rise and Rejection of the Presidential Couple Since World War II, *by Gil Troy*
With Reverence and Contempt: How Americans Think About Their President, *by Thomas S. Langston*

63 Escape Mechanisms by James V. DeLong
Locked in the Cabinet, *by Robert B. Reich*

65 Straight Shooters by T. Markus Funk
The Great American Gun Debate, *by Don B. Kates and Gary Kleck*

68 Riding the Wave by Gregory Clark
The Great Wave: Price Revolutions and the Rhythm of History, *by David Hackett Fischer*

71 Inspecting the Inspectors by Robert W. Poole Jr.
Flying Blind, Flying Safe, *by Mary Schiavo*

Departments

10 Letters
Employment flaws, healthy perspective.

12 Citings
Deterrent defect, cops buying protection, ultimate wimps, this bud's for you...
- *Artifact: Franklin Roosevelt's golden legacy.*
- *Data: Do regulations help home-schooled children learn?*
- *Brickbats: Russian fantasies, theological economics, FAA bomb threats...*

54 Reasonable Doubts: Retro Style by Walter Olson
The law enters a time warp.

74 Selected Skirmishes: Cash Money by Thomas W. Hazlett
Buddy, can you spare an ATM fee?

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Capital Cynics

Who do they think they're fooling?

By Virginia I. Postrel

Washingtonians are down in the dumps. It was bad enough when the rest of the country just didn't like them: At least the anger of 1994 produced the New Republican Congress and the resultant buzz. Washington was the place to be, a city of high drama whose denizens got zillion-dollar book advances and mingled with fashion models in the pages of *George*. Its think tanks became rich, its pundits famous.

No more. "There's not much *élan* of any kind, old or new, in Washington today," says *New York Times* correspondent R.W. Apple, borrowing a phrase from the recent French election. "We don't have a lot of ideas at the moment." People in the rest of the country have stopped paying attention. They care more about JonBenet Ramsey, Tiger Woods, and Bill Gates. Interviewing Apple, PBS's Charlie Rose frets that maybe Gates has "more influence than most senators or cabinet secretaries in this nation's capital."

"The year of the great disconnect" is what *Wall Street Journal* writer Gerald Seib calls it. Turnout in last year's elections was a mere 49 percent, the lowest since 1924. Polls show Americans don't know who Trent Lott is—why should they?—and politicos report record non-attendance at town meetings.

And while it's bad enough to be ignored by the riff-raff outside the Beltway, now Washington has been betrayed by one of its own. Susan Molinari, the perky Republican congresswoman from Staten Island, is quitting her job to become an anchor on a new CBS weekend show. A second-generation pol, she was mediagenic enough to become a "rising star" in the GOP—not a person of accomplishment or ideas but, in Apple's words, "someone who was well spoken of." She was great at reciting the GOP's spin of the day.

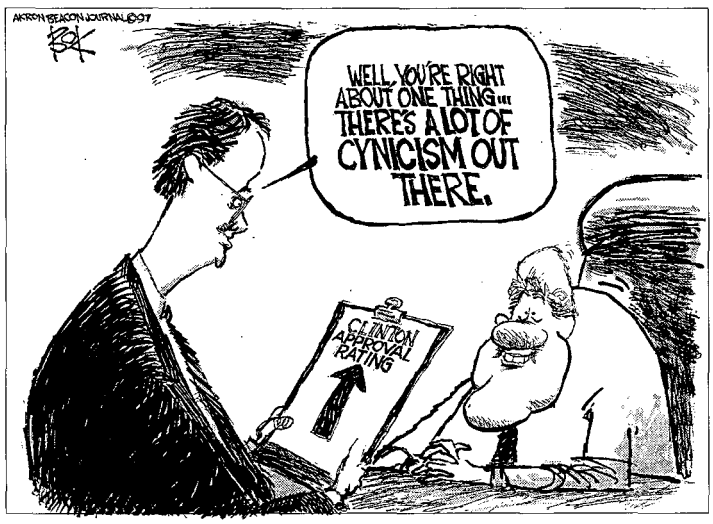
Her resignation stung. "Now, it seems, politics has become just another route to becoming sufficiently famous to land a high-paying TV job," gripes *Washington Post* media critic Howard Kurtz.

And why shouldn't it? The Lethal Center that dominates Clinton's Washington is dedicated to little more than the manipulation of media images: The nation's capital has become the perfect happy-talk training ground for future anchorpeople.

With typical self-absorption, the gloomy Washingtonians are missing the story. Yes, the rest of the country is ignoring them. But it's more than that. A new attitude toward Washington is brewing. It isn't the get-out-of-my-face anger of 1994 or the Perotista throw-the-bums-out anger of 1992. It has less ideological content or political edge, and probably fewer immediate electoral consequences. On good days, it's expressed in resigned cynicism—the attitude that dominates American pop culture and ordinary conversation on those rare occasions that it turns toward the Beltway. On bad days, it asks, with revulsion, *Would you please shut up?*

Why exactly does Newt Gingrich feel compelled to opine that TV networks should show more antidrug public service announcements? Why must Bill Clinton weigh in on "heroin chic" (months after it became passé)? Why must the entire political/media establishment lecture parents to talk to their babies? Why must the president—after months of "reconciliation" meetings with rhetoric advisers—anoint himself "healer of the breach" in race relations? Why must there be bipartisan chin-pulling about whether *Buffy the Vampire Slayer* is adequately labeled for violent content? Why does every crime, natural disaster, scientific advance, or human tragedy require a political spin? Why must a flurry of congressional press releases greet every subject that ever arises in any corner of American life? *Why do these guys have to be the center of attention every second of every day?*

The point isn't that this posturing necessarily has coercive consequences, though often it does. It's that Washington's relentless camera hogging, story manufacturing, and sound biting is cynical and patronizing. Like coaches or movie studios, most Washingtonians copy whatever succeeds. Clinton won the White House twice. Now his insincere, manipulative style has become the modus operandi in most of Washington. And the "permanent campaign" has turned into a hunt for celebrity that puts Hollywood to shame. (Out here, at least they're literally selling the images they create, and they aren't confusing—or pretending to confuse—them with reality.) By treating Americans as blithering idiots, Washington's endless spinning poisons everything it touches. We are too media-savvy to be so easily fooled. The pulpit is no longer bully. It is simply a podium from which to dish out bull.



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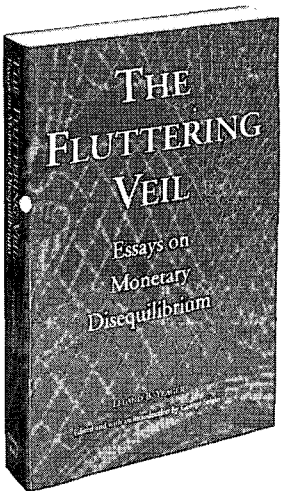
Essays on Economics and Liberty

THE FLUTTERING VEIL
ESSAYS ON MONETARY DISEQUILIBRIUM

By Leland B. Yeager
Introduction by George Selgin



For three decades economist Leland Yeager has extolled the preeminent importance of money as a source of economic fluctuations whose influence goes well beyond mere changes in interest rates or the price level. His work discloses the disruptive consequences of "monetary disequilibrium"—that is, an imbalance of money supply and money demand. Consequently, he argues that well-designed monetary arrangements and policies are important to the success of any free-market economic system; and, that defects in the existing monetary arrangements in "capitalist" countries are manifestly not inherent in capitalism but are "alterable consequences" of the misguided interventions of government. In his Introduction to Yeager's eighteen essays, Professor George Selgin explains why "our understanding of the monetary foundations of a free society owes a great deal to the writings of Leland Yeager."

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Consider the "volunteerism" summit in May. Most of the activities it promoted are admirable. In particular, people who make the sustained, years-long commitment to serve as mentors to poor or troubled kids deserve praise. Such efforts combine empathy and practicality, both worthy traits, and the nation is full of kids who desperately need a window on a wider world. As Amy Sherman notes elsewhere in this issue, concerted volunteer efforts are also vital to the difficult task of moving lifelong welfare recipients to work. (See "Thy Neighbor's Keeper," page 43.)

But the summit was a fiasco, "spin as news," a cynical debasement of the work of millions of volunteers—all designed to get the cameras on the me-me-me of Washington politicians and talking heads. The semi-sincere ones were touting mandatory "volunteerism," usually via graduation requirements for high school students.

But mostly they were touting themselves. Any event that attracts a bunch of former presidents, the current White House honcho, and Colin Powell (not to mention John Travolta, Brooke Shields, and the always self-aggrandizing Arianna Huffington) is decidedly *not* about the anonymous good-doers who tutor children and paint over graffiti. It's a photo op, "just for show" as a Philadelphia ghetto resident put it. The cynicism that greeted the summit from reporters and many conservative commentators was not the "desiccated" selfishness or "intellectual confusion" Huffington found a useful foil. Like the yawn emitted by middle America, it was an appropriate response to a phony P.R. stunt.

Indeed, the work itself was all but irrelevant, as Hanna Rosin damningly reported in *The New Republic*: "Many [volunteers] have come from far out west on red eye flights, and have been standing in the sun since the 6 a.m. sign-up. But it is almost noon, and they have yet to lift a paintbrush. They have seen Clinton trade his crutches for a paint roller, Colin Powell trade his button-down for a T-shirt, Al Gore don a tool belt, Hillary Clinton put on white weeding gloves. They have heard a half-dozen speeches. But, with only three hours left of clean-up time, they haven't done any actual work. 'I'm afraid the paint will curdle,' says a frustrated Chris Thomas, a volunteer from Iowa."

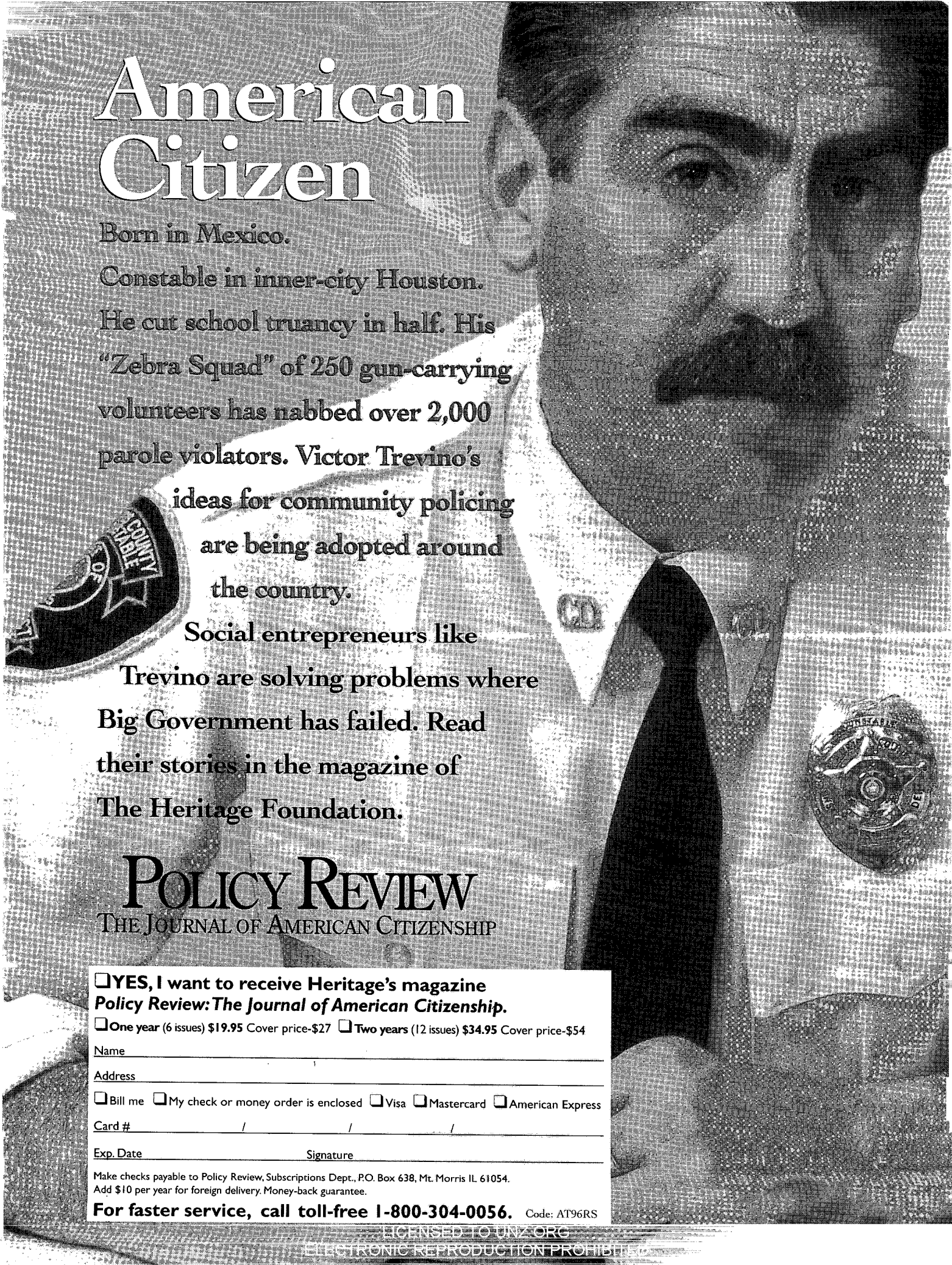
By several accounts, when they finally got to work the volunteers did a lousy job: dropping globs of paint on sidewalks, obliterating store signs, and leaving patches of graffiti showing through. Every weekend, unsung Americans do better work without benefit of politicians or TV cameras. They start first thing in the morning and listen to no speeches. They shut up and do the job.

This is true not only of "volunteerism" but of raising children and running businesses, of teaching and learning, building and creating—of all the activities that make life more than mere existence. Outside the cynical circles of Washington, people do these things for their own sake, not to fabricate pretty images of themselves. Sure, everybody likes to be praised, and we all prefer to look our best. But most of us would rather be praised for something real, to be acknowledged for genuine accomplishments. We don't believe that "appearance is reality," the spinmeisters' motto, and we resent people who assume that we'll fall for their flackery.

Or we just ignore them. "I'm a tough person to ask about politics. I'm sort of apolitical," says a Silicon Valley entrepreneur I recently interviewed for *Forbes ASAP*. People in the Valley, he continues, don't bother fooling with political structure: "We can change the world. If we don't like the way it is, why worry about modifying the structure? We'll just create a new world—create a workaround or a bug fix that co-opts them completely."

On good days, I think such optimists are right. True, the nation's capital still has enormous power to do harm, often through esoteric regulations only specialists can comprehend. (For a good example, see Michael Fumento's "Polluted Science," page 28.) But that power is limited, and getting more so. Hence the march of micro-issues, each more trivial than the last.

The good news, then, is that Washington-the-annoying is the natural result of Washington-the-ignored—and Washington-the-irrelevant. A lot of people, not just Bill Gates, are more influential than senators, cabinet secretaries, and all those other camera-seeking self-promoters. Now if we could just get the cynics in D.C. to shut up.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Pricing Pencils

The FTC's creative market definitions

By Michael W. Lynch

When my ink-jet cartridge starts to sputter or I run out of once-used paper to cycle back through my printer, I, like many small office managers, am faced with a choice. If the day is nice, I can walk four blocks to the west and restock my garrison with provisions from Office Depot. Or, if I feel like walking past the White House, I may visit Staples. When my ink runs dry on deadline, I stop short of the Depot and buy a cartridge at Time Office Products, a small office supplies store that promises to "provide any of 30,000 urgent supply items" the day you call, if you are willing to pay a slightly higher price. Given enough foresight, I need not even leave my office. With just a half-day's notice, I fax an order form into the 800-number ether, and the next day a delivery man (yes, he is always a man) brings my supplies at prices competitive with the two superstores.

This story is not remarkable. Similar scenarios are played out across America. What is remarkable is that the federal government contends that these choices don't exist. In its efforts to block a merger between Staples and Office Depot, the Federal Trade Commission, which itself purchases office supplies from 105 vendors, has objected to this marriage on the grounds that it would result in a manila envelope monopoly.

Never mind, say the regulators, that Staples and Office Depot once combined would account for roughly 6 percent of the office supply market nationwide. Never mind, they say, that both stores lower the cost of office supplies by at least 20 percent in markets in which only one enters. Never mind, they say, that the two stores spent millions of dollars crafting a plan to sell 63 stores to rival OfficeMax, in a good faith attempt to appease FTC staffers. Never mind, they say, that the business strategy to which both stores owe their success is relentless price cutting, which has saved Americans hundreds of millions of dollars since superstores first revolutionized the office supply business in the mid-1980s.

The FTC likes the world as it is—with three office supply superstores. To keep it that way, it is victimizing the very companies responsible for this world of low-priced office suppliers. It claims the superstores compete only against each other in markets where all three exist. In fact, the three stores—Office Depot, Staples, and OfficeMax—account for less than 10 percent of the office supply market, although there is regional variation. The FTC paid for an econometric model which showed superstore prices to be up to 15 percent higher in markets with just one superstore than in markets with two, although prices are higher still in markets that lack a superstore. And it marched into federal court in late May and argued that this merger should be blocked, lest America's budding entrepreneurs and home office enthusiasts face higher stationery prices.

U.S. District Judge Thomas F. Hogan is expected to deliver a decision in late June. But no matter what he decides, this case's existence says much about the bureaucratic impulse to define, categorize, manage, and control. It may also provide a preview of where Clinton's Scotch-tape trust busters may be headed in the coming years.

It is not surprising that the government and the two superstores don't completely agree on the relevant market. Under the merger guidelines, determination of monopoly power requires a two-step process: The market is defined and then a formula which uses market-share data, the Herfindahl-Hirschman Index, is used to determine market concentration. As a result, the biggest battle in antitrust merger cases is always over market definition, with the government arguing for a restrictive definition and the firms arguing for a broader definition.

The absurdity in this case—which promises to be replicated if successful—is the FTC's contention that no other stores compete vigorously enough with Office Depot and Staples to discipline their price-increasing urges. Forget the small mom-and-pop corner grocery that carries cards. The FTC claims that Wal-Mart, which already sells more office supplies than Staples and Office Depot combined, isn't a threat to the single-subject superstores. Nor are the fax order houses that deliver to anyone, even a one-person operation like mine. Worse yet, the FTC claims there is no possibility for entry into the market in the event that a monopolist does increase prices. Rick Warren-Boulton, the FTC-retained economist who served as chief economist in the antitrust division at the Department of Justice under Reagan, calls the notion that other people would start new superstores "bunk."

Such an ossified view of the world is equivalent to defining the book market as a battle between Borders and Barnes & Noble, neglecting the complex ecology of smaller bookstores and even coffee shops, which drives these two giants to excellence and forces them to keep their book and latte prices low. According to the FTC's logic, Circuit City and The Good Guys would be considered a market insulated from the electronics sections of the department stores and office supply superstores that are often found right across the street.

All of us, and most institutions, occupy multiple niches, play a variety of roles, and compete and cooperate in a plethora of settings that belie simple government box checking. Just because the government must identify people and institutions doesn't mean that they will always fit easily into the government's categories, as Tiger Woods's self-identification illustrates. (See "Blurred Vision," July 1997.)

Broadly defined, Office Depot and Staples are retailers; narrowly defined, they are office supply retailers; and absurdly defined, they are specialty office supply superstores. But office supplies account for just over a third of these two stores' sales, the other two-thirds being such things as computers, cellular phones, and furniture. And while traditional furniture stores may not sell office paper, many computer stores do. The markets for all of these products are deep, complex, and interwoven. Just as Circuit City can't increase the price of its computers, lest its customers defect to Office Depot, even a lone Office Depot store faces price constraints because of Wal-Mart's, Kmart's and other stores'

ability to expand into their markets.

Noting that for the last 20 years leading-edge thinking in antitrust—which focuses on barriers to entry rather than market share—has found less and less for government to do, economist Thomas DiLorenzo charges the FTC with going back to a 1950s way of thinking in an attempt to build its bureaucracy. "The problem with the FTC is that the real capital today is knowledge," says DiLorenzo, who teaches at Loyola College in Maryland. "Their old argument about physical capital being the barrier has been stripped from them." However, this hasn't dampened the FTC's desire to manage markets.

We can expect to see more ill-founded antitrust intervention during the remainder of the Clinton presidency. In Washington, rewards come to those who amass and exercise power. And antitrust activism is particularly appealing because it provides a way of promoting big government while pretending to champion business competition. Warren-Boulton offers the classic dichotomy. "[There are] two kinds of worlds to operate in," he says. "A world in which firms face competitors and fight it out for the consumers or one of monopoly in which the government regulates you."

I don't doubt Warren-Boulton's sincerity. But it's hard to take seriously the contention that government needs to regulate the price of pencils. Somehow I think Wal-Mart, the local bookstore, some yet-unproven entrepreneur, or even OfficeMax would seize the opportunity to drive the newly merged company out of business, should it decide to increase prices in the 6 percent of the market it would occupy. In the FTC's world, such thinking is derided as mere "speculation." ◆

REASON NEWS

■ Did you miss Jacob Sullum's *New York Times* article on "heroin chic," Rick Henderson's *Los Angeles Times* piece on stadium follies, or Virginia Postrel's *Forbes ASAP* columns? Check them out on *Reason Online* (www.reasonmag.com), along with REASON archives from 1994 to the present, classic interviews, speeches, and more. Coming this summer: "ahead of the curve" articles and other classics.

■ This is a double issue, as REASON takes a one-month hiatus. Your next copy will be dated October.

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Terry Dwyer
Columnist and
Institute for Justice Contributor

Once people turned first to the ACLU whenever government violated their rights. No longer. As that group has fought in recent years to create a right to welfare, to preserve racial preferences, and to kill school choice, people have increasingly sought a principled alternative that will protect individual rights rather than expand government.

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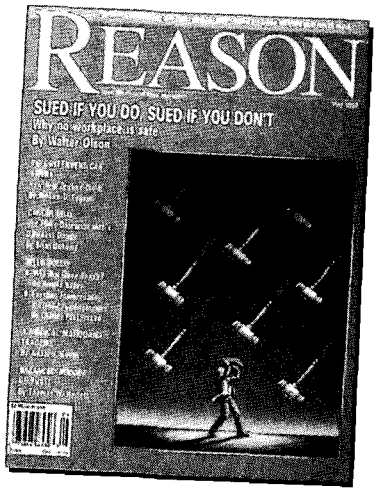

Employment Flaws

In his article on employment law ("Occupational Hazards," May), Walter Olson forgot to mention the most prevalent way of side-stepping employment regulations. As a Texas business owner, I can tell you many of these laws do not apply to businesses that employ fewer than 10 or 15 people. They also do not apply to hiring employees of other firms.

As a result, the trend is toward more and more outsourcing of jobs. If you use a secretarial firm to provide your secretaries, you are not as liable as if you hired them yourself. If the providing firm is small enough, it may not be liable either. If you don't like anything but pretty female secretaries, you tell the firm owner you liked Jenny better and don't send Tom again. If the owner doesn't get the point quickly enough, or doesn't want to get the point, you go to another firm.

The laws Olson describes will push us into becoming a nation of individual contractors and independent service providers instead of employees, and with that comes the undoing of all the employment laws, ridiculous or not. Then the government will have to start regulating those choices as well. Is REASON ready for the day when it must monitor the gender, race, sexual orientation, and religious preferences of its contributing writers?

Anthony M. Castaldo
San Antonio, TX

Walter Olson replies: Chapter 16 of my book *The Excuse Factory*, from which my REASON article was excerpted, covers outsourcing and other ways firms understandably try to skirt the law.

Healthy Perspective

Michael Lynch's review of my book *Market Driven Health Care* ("Taxing Our Health," May) is a prime example of Washington myopia—like a commentary on the fourth inning of a baseball game by someone who doesn't understand the sport.

Wake up and smell the Starbucks: Entrepreneurs, newly assertive and informed consumers, and powerful, cost-effective technologies are transforming health care—not government policy. My central chapter, "New Rules: New Tools," explains the keys for success to the consumers, providers, and payers in this market. Government merits nary a word.

Washington myopia also clouds Lynch's review of my recommendations for health policy. Lynch eagerly plays a muddled version of Washington's tired class warfare game, but he does not grasp the fundamental economics of health insurance. He worries that the income-adjusted health insurance I espouse will help old—and, he presumes, rich—people like me, but will make health insurance unaffordable for young, healthy, middle-class people. Wrong. The overall impact of the risk- and income-adjusted health insurance I recommend is to substantially reduce insurance costs for the healthy middle class. (The effect of risk on insurance premiums greatly outweighs the impact of most deductibles.) And while Lynch is perfectly willing to violate libertarian principles to force the wealthy to subsidize the health insurance premiums of the middle class, he is unwilling to force anyone to subsidize the costs of health insurance for the poor. Logical Fallacy 101, anyone?

Market Driven Health Care is on the current events best-seller list because health care providers and consumers are interested in its analysis of the causes for the maelstrom in which they are caught, and in my vision of the future of the sector—the likely failure of managed care, the dubious virtues of "big is beautiful" consolidation, and the triumph of health care–focused factories. Like REASON's readers, mine are primarily interested in how a real market operates. They may create the support for a market-driven health insurance system that the muddled health policy snorers have thus far failed to spark.

Regina E. Herzlinger
Nancy R. McPherson Professor
Harvard University Graduate School of Business Administration
Boston, MA

Michael Lynch replies: Contrary to Prof. Herzlinger's suggestion, I neither engaged in class warfare nor violated libertarian principles. As I sip my second cup of Starbucks, I recall simply pointing out that having the government mandate insurance coverage based on ability to pay —higher income, higher deductible— would have the perverse effect of forcing people with lower incomes to spend more on insurance. I also noted that giving Congress the power to specify the content of insurance policies—and the IRS the task of ensuring that each of us buys the right policy—is a bad idea.

Prof. Herzlinger's book, like her letter, is long on assertions and short on analysis of how those assertions will come to pass. Her vision is compelling, her angle is refreshing, but ultimately, like a double decaf nonfat latte, her book fails to deliver.

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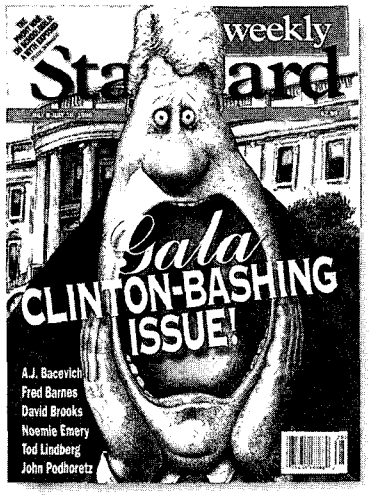

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Deterrent Defect

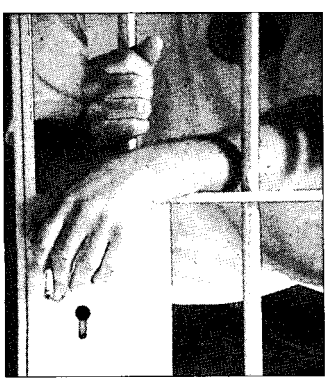
By Jacob Sullum

Mandatory minimum sentences for drug offenses are often criticized as unjust, meting out excessively harsh punishment based on arbitrary criteria. A new report from the RAND Corporation shows that such sentences are also inefficient, an argument that may ultimately carry more weight with taxpayers.

Using a mathematical model of the U.S. cocaine market, a team of four researchers led by Jonathan P. Caulkins compared the effects of an additional $1 million spent on: 1) longer sentences for drug dealers who are already being apprehended; 2) arrest and conviction of more drug dealers; and 3) treatment programs for heavy cocaine users. As measured by reductions in drug use, in revenue from drug trafficking, and in crimes against people and property, treatment was by far the most cost-effective option, followed by more law enforcement, with longer sentences last.

Under RAND's "best estimate" assumptions, $1 million spent on longer sentences would cut cocaine use by only 13 kilograms. The same amount would reduce consumption by 27 kilograms if spent on additional arrests and by more than 100 kilograms if spent on treatment. The pattern remained the same for the other two measures of effectiveness and under a wide range of assumptions. The report, *Mandatory Minimum Sentences: Throwing Away the Key or the Taxpayers' Money?*, concludes that "[m]andatory minimum sentences are not justifiable on the basis of cost-effectiveness at reducing cocaine consumption, cocaine expenditures, or drug-related crime."

A summary of the report is available at www.rand.org/publications/mr/mr827/.



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Store-Bought Protection

By K. L. Billingsley

When two heavily armed bandits grabbed $350,000 from a North Hollywood bank on February 28, the ensuing shootout with Los Angeles police resulted in a prime-time TV special and prompted politicians to call for stricter gun control. Lost in the shuffle, though, is how the outgunned cops ended their battle with robo-robbers Larry Eugene Phillips and Emil Matasareanu.

The pair deployed five fully automatic rifles, each of which was illegal long before the current outcry against so-called assault weapons. During the heist, they sprayed anything that moved, including news helicopters, with rapid fire. Police-issue 9mm pistols are hardly a match for fully automatic firepower. So as the bullets flew, the outgunned cops headed not to the local precinct but to nearby B&B Sales, a private gun store.

The owner recognized some of the officers as previous customers and, overlooking the 15-day waiting period a typical civilian would face before being able to legally obtain firearms, quickly supplied them with four 5.56mm Bushmaster XM-15 semi-automatic rifles with high-capacity magazines and two Remington shotguns with rifled slugs. Once the officers were on a more equal footing, they plunged back into the fray, taking down the bad guys with no loss of innocent life. The LAPD offers no comment on the officers' use of these privately obtained weapons during the onslaught, as it has been sued by the robbers' families for refusing to give the crooks medical attention after shooting them.

Balance Sheet

By Rick Henderson

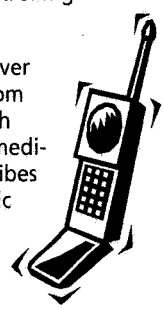
ASSETS

▲ **Sound Diagnosis.** Unconventional cancer physician Stanislaw Burzynski's 14-year battle with the FDA is over. (See "Malignant Law Enforcement," May.) After Burzynski's first trial ends in a hung jury, federal prosecutors drop all charges but a single contempt-of-court citation for allowing shipments of his unapproved drug across state lines. The jury acquits unanimously, noting that Burzynski got his staff and patients to sign waivers saying they would not send the drugs outside Texas.

▲ **Southern Comfort.** Privatization moves forward in Argentina. The government will privatize 30 commercial airports by September. Current employees will receive a 14 percent stake in the newly established company that will operate the post office. And the Buenos Aires province expects to get $1 billion by selling its electric utility.

▲ **Defense Mechanisms.** Once derided as science fiction (or little more than a license for military contractors to print money), missile defense finally becomes cost-effective. Instead of the $20 billion land-based detector program pushed by the White House, the Congressional Budget Office suggests that as many as 650 mobile missile interceptors could be deployed for as little as $5 billion. Sen. Jon Kyl (R-Ariz.) suggests putting them on existing Navy Aegis destroyers, already patrolling worldwide.

▲ **Without Reservations.** American Indians discover the wonders of making money. And it's not just from gambling. *Forbes* notes tribes branching out in such areas as cellular telephone services, banking, and medical device manufacturing. And such enterprising tribes as Wisconsin's Oneida Nation place the paternalistic Bureau of Indian Affairs on notice: Its governing councils are dominated by people who want BIA regulators to quit stifling tribal entrepreneurship.



Chartering Classes

By Lisa Snell

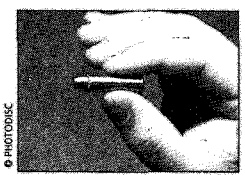
Imagine buying a new home and as part of the package getting to send your children to a neighborhood charter school. As charter school laws are enacted across the nation—26 states have passed such legislation

▼ **Grand Old Patsies.** New York Republicans give rent control new life. Trolling for votes, Sen. Al D'Amato, Gov. George Pataki, and Big Apple Mayor Rudolph Giuliani pledge to stop State Senate Majority Leader (and fellow GOPer) Joseph Bruno's plan to let New York City's rent control laws expire this summer. "Rent control must be protected," said Pataki, "and it will be protected."

▼ **People's Front.** Statism makes an electoral comeback. Clintonian Tony Blair and Labour rout the pathetic British Tories. France throws out its center-right government in favor of a Socialist/Communist/green coalition. And Mongolia, which established a massive privatization initiative and abolished all tariffs last year, elects a former (unreformed) communist president.

▼ **Comp Stomp.** Congressional Republicans defy Bill Clinton's promised veto and offer a bill letting employees choose comp time off rather than getting overtime pay. But labor unions, with the White House's blessing, counter with a proposal that would exempt construction workers from any comp time substitutions. *Engineering News-Record* notes that if construction is exempt, unions in other businesses will demand similar treatment, thereby gutting the bill.

▼ **Hard Target.** Gun controllers target ammunition sales. L.A. City Councilman Mike Feuer introduces a measure that would force people buying ammunition to get a license and pass a background check. He would also force gun dealers to sell child-proof trigger locks with each firearm and increase business taxes on gun stores. Other Southern California cities plan to follow suit. Meanwhile, in Washington, anti-gun nut Rep. Charles Schumer (D-N.Y.) backs a bill to outlaw "cop killer" bullets.



LIABILITIES

—private education companies are teaming up with home developers to provide schools in the communities they build. Arizona, which has approximately one-third of the nation's 480 charter schools, recently granted a charter to the Minneapolis-based Education Alternatives Inc. to build and operate 12 public schools over the next three years.

In Arizona, local school districts often cannot build schools fast enough to accommodate new residents. And the Grand Canyon State isn't alone: Student enrollment nationwide is 51.7 million, an all-time high. (Baby boom enrollment peaked at 51.3 million students in 1971.) U.S. Education Secretary Richard Riley predicts that enrollment will reach 54.6 million students by 2006.

EAI will contract with home developers to build new neighborhood schools in fast growing parts of Phoenix. The first three are scheduled to open this fall. EAI expects to enroll more than 500 students at each school for a total of 6,600. Other companies that have received charters include Sabis Educational Systems, which obtained a new charter in Chicago; Alternative Public Schools, which operates a charter school in Chelmsford, Massachusetts, and is pursuing opportunities in North Carolina; the Edison Project, which will start schools in Denver and Duluth, Minnesota; and Ombudsman, which will also open a school in Arizona this fall.

These new school arrangements help property developers, education entrepreneurs, and school districts. Developers can market tuition-free privately run public schools to their customers. The education companies will start classes in state-of-the-art schools built by the developer. And school districts will have less overcrowding and will not go further into debt building new schools. Although Arizona is pioneering this neighborhood charter school arrangement, education companies have expressed interest in several other states, including Texas, Florida, California, and Colorado.

Ban Aid

By Jacob Sullum

David A. Kessler, former commissioner of the Food and Drug Administration, first suggested that his agency might have jurisdiction over tobacco products in February 1994. At the time, Rep. Henry Waxman (D-Calif.), then chairman of the House Subcommittee on ▶

QUOTES

"The Republican congressional leadership...would rather kill people than raise taxes."
—*Los Angeles Times* columnist Robert Scheer, explaining his support for raising taxes on cigarettes to finance a new health-care entitlement for middle-class children

"With the arrival of capitalism and the inevitable shakeout of winners and losers, violent crime has increased, particularly among teenagers."
—*New York Times* reporter Jane Perlez, in a May 20 news story about violence in Poland

"The worst thing is that you see the whole issue of order start to slide. I lived in America in the '60s and I saw what happened: the slow erosion of authority. The society became less orderly than is desirable. I certainly don't want to see this happen."
—Tung Chee-hwa, chief executive-designate of Hong Kong, on why the government will crack down on political protests after the Chinese takeover

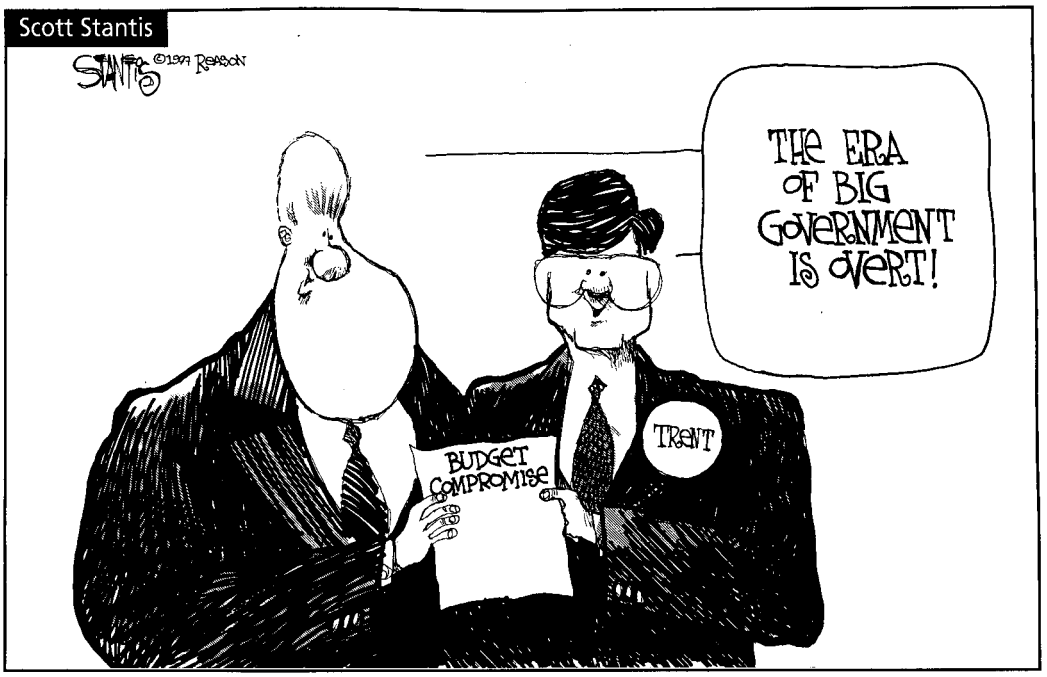
BRICKBATS

◆ Do you think the Federal Aviation Administration knows how to handle a bomb threat? Well, think again. The FAA was warned of a possible bomb at the Portal Building in Washington, D.C., which houses the FAA and other government offices, including workers from the Department of Education. So did the FAA have security clear out the building? Not quite. It telephoned a select group of managers. They, in turn, alerted their immediate staffs, and they all left the building. About 80 percent of the workers were still inside, and didn't find out about the threat for another hour.

◆ Thou shalt not steal. Unless, of course, the victim is richer than you are. That seems to be the biblical interpretation of the Rev. John Papworth, a minister with the Church of England. "Jesus said 'Love your neighbor,' he didn't say 'Love Marks and Spencers,'" said Papworth, referring to the big British retailer. Papworth says it's wrong to steal from individuals or small merchants, but shoplifting from big retailers is another matter.

◆ In San Francisco, the Human Rights Commission has reproached the Café, a gay and lesbian bar in the Castro district, for violating nondiscrimination laws. The bar kicked out a straight couple for kissing passionately, an act forbidden for straights but not gays. The Café's manager said that some of its patrons find such displays offensive, but that argument didn't carry water. So now the bar has banned heavy kissing by people of all sexual orientations. ▶

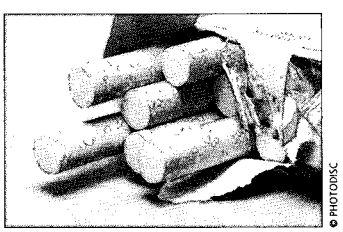
Scott Stantis



Health and the Environment, told the *Los Angeles Times* that, without action by Congress, "the FDA is going to have only one option: ban cigarettes." Kessler seemed to agree, saying, "It is vital in this context that Congress provide clear direction to the agency."

But after the Republicans took control of Congress, Kessler decided the FDA could act on its own. By regulating tobacco products as medical devices instead of drugs, he sought to avoid the strict safety and efficacy standards that cigarettes could not possibly meet. Yet last April, after a federal judge ruled that the FDA's claim of jurisdiction was reasonable, the Associated Press reported that Waxman "said the ruling could open the door to an outright ban."

Phil Schiliro, Waxman's press secretary, says his boss, a vocal critic of the tobacco industry, does not favor that outcome, and "Congress won't let it happen. That creates a bigger problem than we have now." But he notes that the medical-device provisions the FDA wants to apply to cigarettes say the agency's regulations are supposed to provide "reasonable assurance of safety and effectiveness." The FDA maintains that there is enough wiggle room to keep cigarettes on the market, but Schiliro concedes that "reasonable people can disagree about whether they have the discretion or not....You could see an argument where they would say, 'We have no choice but to ban this.'" In the end, he says, Congress will have to tell the FDA how to regulate cigarettes. So Kessler had it right the first time.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Ultimate Wimps

By Rick Henderson

Ultimate fighting, the no-holds-barred hybrid of wrestling, boxing, and martial arts that was recently spoofed in the popular sitcom *Friends*, may have gone the way of roller derby. Surprisingly, the people who pulled the plug on the sport were those who stood to make money from it: cable operators.

The first Ultimate Fighting Championship was held in the United States in 1993. A number of critics charged that ultimate fighting is barbaric, some comparing it with cock fighting. Such charges led the boxing commissions in Nevada and New York to refuse to sanction the events, effectively banning the sport. Yet it has been popular in Brazil for more than 70 years, where promoters say no contestant has died as a result of injuries suffered during a fight. Indeed, fans of ultimate fighting point out that combatants, who wear no gloves or other protective padding, may be more likely to be defeated by an opponent before they are seriously injured than, say, boxers or even football players.

In May, Time Warner's cable division joined TCI,

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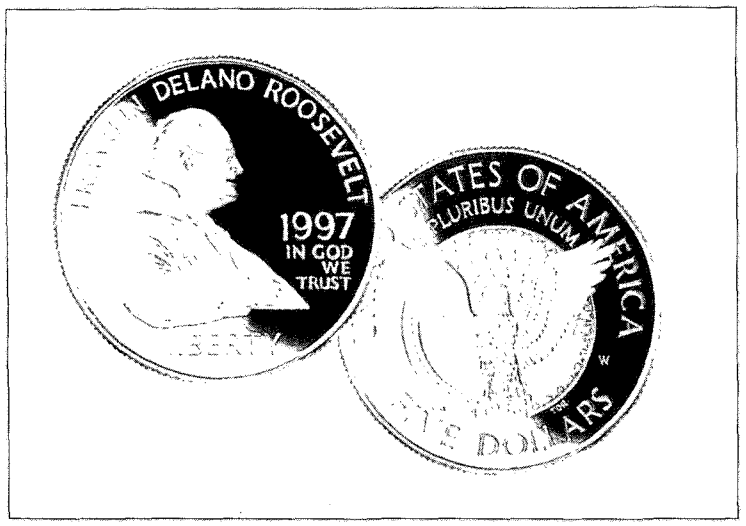


More Bullion from Washington

As if the multitude of federal regulatory agencies that have been established over the past 60 years (and the neo-Stalinist buildings in which many are housed) weren't tribute enough, on May 3 the Franklin Delano Roosevelt Memorial opened in Washington. While the run-up to the unveiling of FDR's statue caused a minor furor among the easily offended—should Roosevelt be shown in a wheelchair? smoking a cigarette?—one aspect of the memorial's financing would cause the 32nd president to spin in his grave. To keep down the taxpayer costs of maintaining the 7.5-acre FDR Memorial, last year Congress authorized the Treasury to mint and sell a commemorative coin, made of 90 percent gold.

That's right. The president who outlawed the private ownership of gold in 1938 is being honored a half century later with an 8.359 gram coin, available as a proof, lapel pin, or pendant (with or without chain). Without a hint of irony, the U.S. Mint's press release cited FDR's four inaugural medallions and the Roosevelt dime and said, "We're delighted to continue FDR's numismatic legacy with the minting of this coin."

—Rick Henderson

Cablevision, and other providers by announcing it would no longer carry ultimate fighting matches on its pay-per-view outlets. A few weeks earlier, National Cable Television Association President Decker Anstrom had urged members to drop the fights, saying they weren't up to the standards of other cable offerings (presumably including such stellar programs as wet T-shirt contests, bodybuilding championships, professional wrestling matches, or reruns of *The A-Team*).

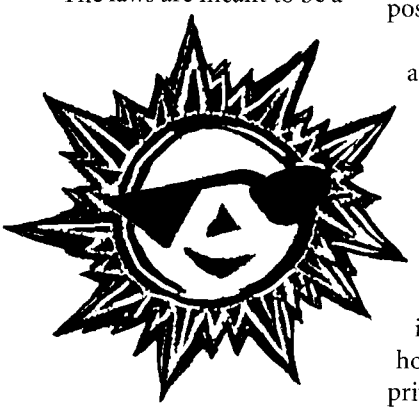
In a more telling statement, Anstrom also suggested it might not be politically astute to air ultimate fighting contests. Good move: The chairman of the Senate Commerce Committee is Arizona Republican John McCain, a longtime foe of ultimate fighting. McCain, whose committee regulates the cable industry, has suggested a federal ban of the sport. McCain shouldn't bother: Without the prospect of pay-per-view revenues, ultimate fighting may have to throw in the towel.

Kids These Days

By Brian Doherty

It's widely thought that the world is getting more and more dangerous for kids, even though that perception isn't always accurate. (See "Child-Proofing the World," June.) But now many cities are giving parents a new reason to keep their kids indoors: daytime curfew laws.

The laws are meant to be a more powerful way to stop truancy and curb juvenile crime. But some parents, especially those who home school or use private schools with unusual schedules, think the laws are harassing their kids. In April, some of them filed a suit challenging a Monrovia, California, daytime curfew law.



Dozens of California cities have enacted such laws, which give the police power to stop school-age kids seen in public during school hours and question them—and fine them or give them community service if they are supposed to be in school.

Robyn Nordell leads a grassroots campaign against such laws. She has succeeded in getting some California cities to reject them and the Orange County Board of Education to issue a resolution against them. She is especially alarmed about how some of the laws recruit private business owners into enforcing the law by making it "unlawful...to assist, aid, abet, or encourage" anyone in violating the law.

Many other cities, in California and elsewhere, are considering such laws, and California is considering a statewide daytime curfew. Even President Clinton has said good things about the idea.

The Home School Legal Defense Association is one of the parties in the Monrovia lawsuit. That group's vice president, Mike Smith, says that daytime curfew law are "un-American. They violate parents' rights to control the upbringing of their children, and they violate the children's rights to travel."

Flat-Tax Societies

By Nick Gillespie

Is believing in the flat tax —termed "truly nutty" by Lamar "This Shirt Was Made For Walkin'" Alexander ▶

BRICKBATS

◆ A man on trial in Wichita, Kansas, for robbing a shoe store propped his feet up on the defense table, wearing a pair of stolen boots. "I leaned over and stared," said Judge James Fleetwood. "I said, 'Surely nobody would be so stupid as to wear the boots he stole to his trial.'" Alas, Charles Taylor was. He was convicted, and deputies confiscated the boots, sending him to jail in his bare feet.

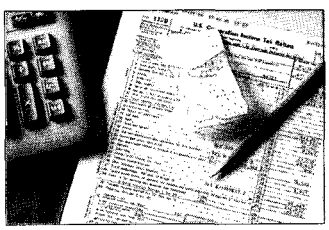
◆ Joseph Stropnicky had taken care of the kids and done the housework during much of his 18-year marriage. So when he and his physician wife split, he wanted an attorney with experience representing homemakers. Judith Nathanson seemed perfect. One problem: She represents only women. Indignant when she turned him down, Stropnicky filed a complaint with the Massachusetts Commission Against Discrimination, which decided Nathanson broke anti-discrimination laws and ordered her to pay Stropnicky $5,000 for emotional distress.

◆ Maartin Altena. Juus Janssen. Jan van Vlijmen. They aren't exactly household names, even in their native Netherlands. But if Dutch authorities have their way, they soon will be. The government is upset that Dutch symphonies play too little music by Dutch composers. So they've ordered national music makers to play at least 7 percent Dutch music. The government, which has actually studied the matter, says the symphonies now play the completely inappropriate amount of just 4 percent to 5 percent Dutch music.

Chip Bok

during the last presidential election season—the public policy equivalent of believing the earth is flat? As a recent study by Gregory Fossedal and Merrick Carey of the Alexis DeTocqueville Institution points out, most opponents of flat tax proposals characterize such plans as "exotic-risky-kooky gamble[s]."

In an international comparison of personal income, capital gains, and corporate profit tax rates, Fossedal and Carey point out something else, too: Flat tax schemes "are the single most common arrangement in...[the] tax codes studied." The authors looked at tax policies in 86 countries and found that 80 percent of corporate income tax codes are flat (at an average rate of 30.5 percent) and that about half of capital gains codes are flat (with an average rate of 28.2 percent).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Personal income rates were the exception to the rule: Only 12 out of 86 countries charged flat taxes on wages and personal income; half apply "steeply progressive codes," with effective top rates of 50 percent to 90 percent. The average top personal income rate for all countries was 42.8 percent. Fossedal and Carey also note that, on average and in constant dollars per capita, GDP in countries with "flat personal income tax[es]" grew at 2.1 percent annually over the past 15 years, versus 1.1 percent for all countries. Developing nations with flat personal income taxes averaged 2.7 percent annual growth over the same period, compared with 0.7 percent for developing nations as a whole.

Similarly, the authors point out that countries with "longitudinal fairness"—similar rates for personal income, corporate profit income, and capital gains—grew at 2.9 percent in inflation-adjusted per capita GNP over the past decade, compared with 1 percent for all countries.

Disability Roundup

By Brian Doherty

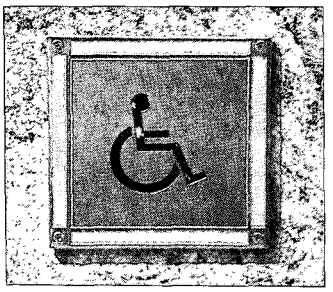
Just because you or a loved one hasn't been sued yet, that doesn't mean the Americans with Disabilities Act isn't still out there. (See "Unreasonable Accommodation," August/September 1995.)

Some recent developments in ADA law include:

• A war of court cases over architects' responsibilities under the law. In January, a Florida judge decided that the architect of a hockey arena can be sued for designing a building where lines of sight for the disabled just aren't as prime as everyone else's.

But in a July 1996 decision in a Washington, D.C., court, a judge decided that the architect should be liable only if the same individual or firm designed *and* built the offending building. The Department of Justice agrees

with the Florida judge and is pursuing its own lawsuit against Ellerbe Becket, the



Minneapolis architectural firm at issue in all three cases.

• An epileptic fired by the Ryder truck company for being a possible safety hazard as a driver sued and won $5.5 million under the ADA; at another job, this person had a seizure while driving and crashed into a tree. This case and similar ones actually inspired *The Washington Post* to run an article on the safety risks of the ADA, in which disabled-rights activist Chai Feldblum of Georgetown University becomes a born-again convert to cost-benefit analysis, saying that any safety risks that come from forcing businesses to hire someone they think is unfit have to be balanced against the *benefits* of forcing businesses to hire someone they think is unfit.

• The U.S. Equal Employment Opportunity Commission has finally issued guidelines to clarify the mental health aspects of the ADA. The guidelines offer specific examples, some of which are more frightening than soothing—like how a disheveled, cursing, mentally ill employee can't be gotten rid of if standards for behavior and appearance aren't absolutely essential to performing the job. But in the end the guidelines, which are not binding on courts, do nothing to solve the essential open-endedness of psychiatric disabilities and the vagueness of such ADA terms as *reasonable accommodation* and *undue burden.*

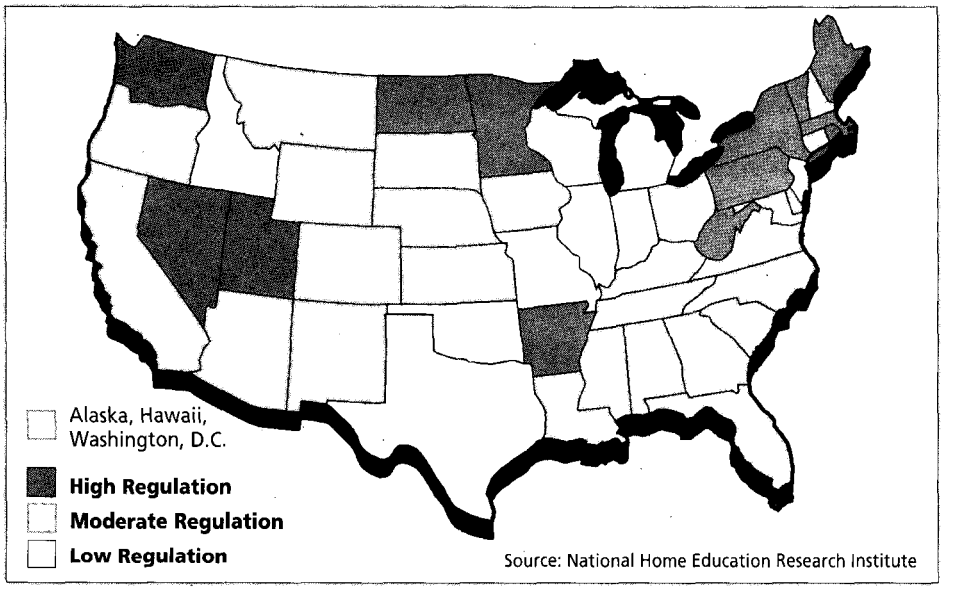
DATA

Home Rule

By Nick Gillespie

A recent comparison of over 5,400 home school students and their public school counterparts highlights two interesting findings: 1) On average, regardless of race or socioeconomic status, the nation's roughly 1 million home schoolers scored more than 30 points higher than public school students on standardized tests. 2) There was no correlation between the level of government regulation and the level of achievement for K–12 home schoolers.

For the study, *Strengths of Their Own: Home Schoolers Across America*, Brian Ray, head of the Salem, Oregon-based National Home Education Research Institute, classified states as "high regulation," "moderate regulation," or "low regulation." High-regulation states "require parents to send notification or achievement test scores and/or professional evaluation, plus other requirements," such as curriculum approval by the state, teacher qualification of parents, or home visits by state officials; moderate-regulation states require parents to "send notification, test scores, and/or professional evaluation of student progress"; and low-regulation states do not require the parents "to initiate any contact with the state." The average percentile ranks for home schoolers on a basic battery of national achievement tests were 86 percent (high regulation), 85 percent (moderate regulation), and 86 percent (low regulation), compared with the average percentile rank for public school students which was, by definition, 50.



Flat-Bread Truck

By Brian Doherty

Are capitalist robber barons conspiring to ruin Passover? The state of Florida wants to know. This Passover season, the state attorney general's office launched an investigation into possible antitrust violations in the matzo manufacturing and distribution system. Price fixing is one possible explanation for the observation that a box of matzo in a supermarket in South Florida can cost $12 to $13, while up in New York it might be only $4.00 to $5.00, says Assistant Attorney General Robert J. Buchner. (The fact that the matzo is manufactured in New York and New Jersey and then shipped down south shouldn't matter, Buchner thinks.)

So far the state has subpoenaed America's two biggest matzo manufacturers, Manischewitz of New Jersey and Aaron Streit Inc. of New York, and various distributors.

"It's just some people who want to get re-elected," grouses Mel Gross, vice ▶

BRICKBATS

◆ Since taking control of the Afghanistan capital of Kabul, the religious conservatives of the Taliban army have banned foreign books and magazines, all photography and music, and most games. Among miscellaneous other edicts: All government workers (who must be men) must wear turbans. Windows of homes must be painted black so the women inside can't be seen. And paper bags are forbidden because they may have been made from recycled paper that had parts of the Koran written on it.

◆ Workers in many Russian factories are being paid in kind by cash-strapped managers, with the very products they manufacture. Workers are left to sell the items themselves. But sometimes that's easier said than done. Just ask the workers at the Akhtuba factory in Volgograd, which used to make marine navigation equipment. They now make a rubber dildo known as "the Adam." Workers who tried to sell their goods found out what factory managers should have learned long ago: People now want electronic vibrators. And it's hard even to give away a Russian-made dildo.

◆ From our "Do As I Say, Not As I Do" Department: Susan John is a New York state lawmaker who sponsored a "zero tolerance" bill that would force teens who drive drunk to forfeit their driver's licenses. She has also pleaded guilty to driving while impaired. Said John, "This will give me additional insights into the problem of drinking and driving."

—Charles Oliver

Henry Payne

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president at Steit. "They wanted records about our prices. We sell at the same price to everyone. We're not responsible for what stores charge. I find it troubling that politicians can't figure this kind of thing out without spending taxpayer money."

Elliot Silverman, Manischewitz's attorney, also asserts that "Manischewitz has nothing to do with the price that wholesalers charge to retailers or retailers to the public. To the extent there are differences in retail price, that's nothing to do with Manischewitz." Manischewitz paid a fine in a federal antitrust investigation in 1990, but Silverman stresses that the company has been sold since then, and its management has completely changed.

Buchner can't say specifically how the investigation might proceed, but if any company is found guilty of knowingly fixing prices, it could face up to $1 million in fines, and its officials could receive as much as three years in prison. Florida is also investigating price fixing in the toilet paper industry.

This Bud's for You

By Jeff A. Taylor

Now in coolers in 23 states: Hempen Ale, America's first hemp-flavored beer.

After two years of talks, Frederick Brewing Co., the largest brewer in Maryland, got the thumbs up from the U.S. Bureau of Alcohol, Tobacco, and Firearms and the Drug Enforcement Administration to sell Hempen.

Although botanically related to marijuana plants, hemp has only trace amounts of the psychoactive substance tetrahydrocannabinol (THC). Hemp is so common that the average bird feeder contains hemp seed. Hempen Ale is THC-free, but the hemp seeds with which it is brewed give it an herbal flavor.

The company is selectively marketing Hempen in states that, says President Marjorie McGinnis, have "free spirits." Arizona and California, which approved the medicinal use of marijuana in November, are among the picks, as are Oregon and Washington, hot spots of the hemp movement.

In fact, the brewer sees the beer as a quasi-political statement. "We support those who are attempting to awaken policy makers to the vast potential of a renewed American hemp industry," said brewery CEO Kevin Brannon in a written statement. "And we're doing our part—one beer at a time."

The beer is also available in Texas, which could prove a problem. Although Hempen has been OK'd by the feds, individual states have the authority to regulate products as well. Several years ago, Lone Star regulators resisted distributing Dixie Brewing Co.'s Blackened Voodoo ale because of its "Satanic" labeling. ◆

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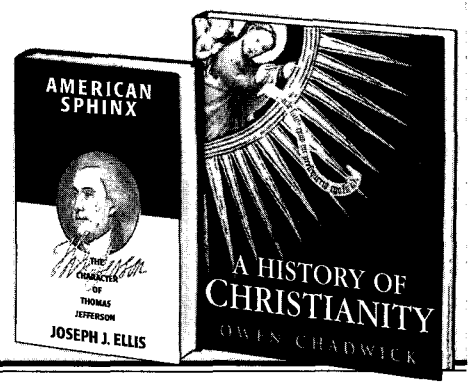

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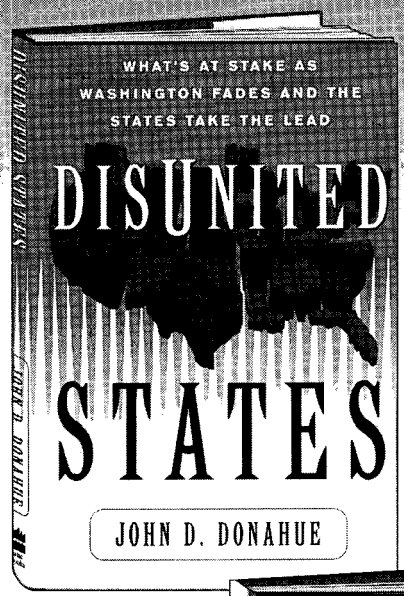

MORAL JUDGMENT
James Q. Wilson

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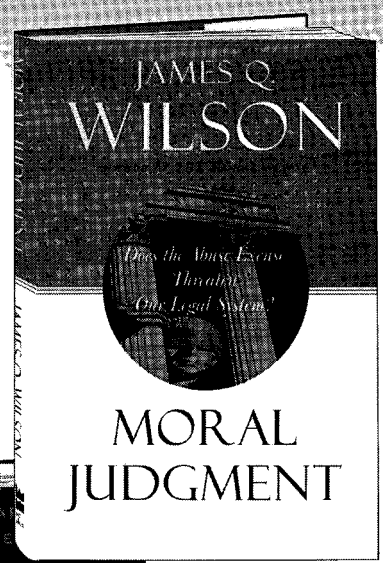
—PHILIP K. HOWARD, author of *The Death of Common Sense*



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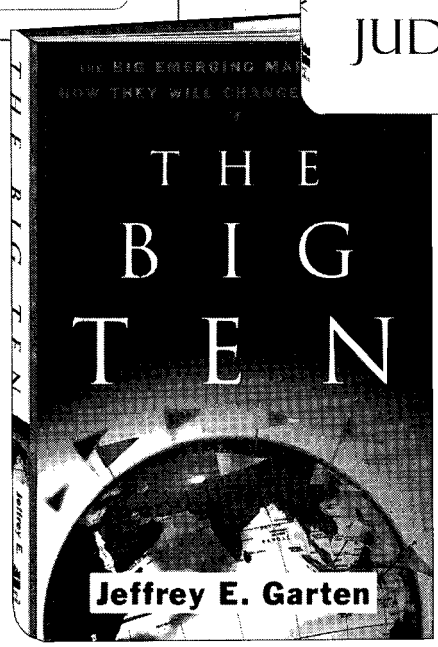

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The Embarrassment of Riches

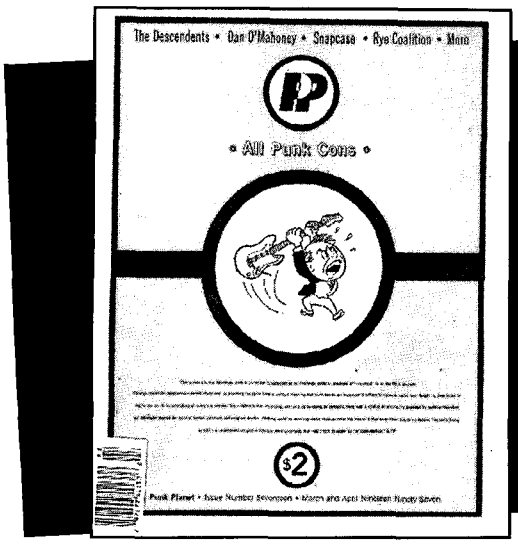
For today's independent artists, integrity can be financially rewarding.

Can punk rock and alternative comics make peace with entrepreneurial capitalism?

At the San Diego Comic Convention, an artist-rebel harangues a crowd of hundreds in a huge double hall in the convention center. His name is Todd McFarlane, and he is one of the most popular comic book artists of his generation. In 1992, he abandoned a safe berth with a giant entertainment corporation, Marvel Comics. McFarlane's art sold millions of Spider-Man comic books, and made him a wealthy man.

An insurrectionist and troublemaker, McFarlane enticed some of Marvel's other star attractions to quit with him, and set up a new umbrella company for their work: Image Comics. Image differs from big, traditional comic companies. The artists retain full ownership of their own characters and work. The business end of the company works for *them*, merely helping them with printing, promotion, and distribution. The creators are the bosses. In a field dominated for decades by two big companies—Marvel and DC (a subsidiary of Time Warner, the world's biggest entertainment conglomerate)—this was a truly revolutionary move: the independent creator at war with the big corporation.

BY BRIAN DOHERTY



"Nobody [in the independently produced arts] actually talks about the money because it's considered to be a very insincere source of inspiration, a dirty facet of a dirty business," says one independent record distributor. While its sources are understandable, this attitude hurts artists, depriving them of both audiences and profits.

Addressing the comics convention, McFarlane looks the part of the scruffy modern Bohemian, wearing a loose blue T-shirt, denim shorts, a dirty baseball cap, and a goatee. But as he swaggers and jokes, he seems to revel in demolishing some traditional preconceptions about the relationship between money and art.

Oh, money isn't important to him, this rich man assures the crowd, in the classic tradition of the artist rising above mundane concerns. Then the punchline: "The only good thing about money is, if you have enough of it, you can do whatever you want."

And he's doing it. Instead of licensing his popular superhero Spawn to some toy company, he started his own toy company. Sure, he's letting outsiders make movies and cartoons of Spawn, but he's keeping a close eye on them. He sounds like the traditional artist bashing corporations when he gleefully sneers that "the big corporations are bloated and fat. They can't catch a skinny little weasel like me." But then he makes a joke of the old cliché that to an artist, selling your creations for others to use and profit from is as bad as selling your children. "When I sell my kids," McFarlane jokes about his TV and movie deals, "I want visitation rights and some say in how they are raised."

Across the country, in another area of youth-oriented pop culture, Patrick Hughes tells another story of working outside the traditional corporate structure. Hughes runs an independent record store, carrying only small-label independent releases, in Gainesville, Florida.

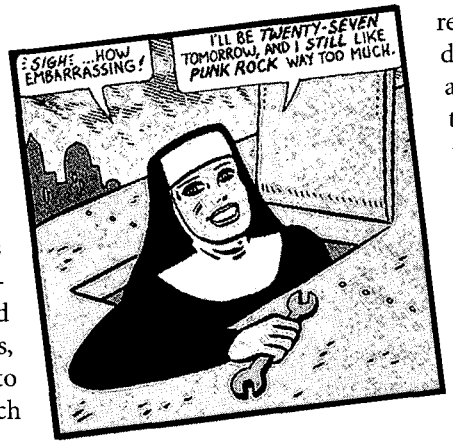
"I got a call from these guys who had just put out a record by a local band," he recalls. "It was their first time doing this, so they had some questions about the business end of it all. They wanted to know things about distribution, standard prices, and such. I gave them some advice about how to price it in line with the usual market rate, which would allow them to make their money back plus some.

"That stopped them. 'Oh, we don't want to make any money on it,' they told me. 'You know, it just wouldn't be right, it would just feel weird.' I couldn't really pin them down to *why* they felt this way. I mean, what's the problem? Charge an extra 50 cents, sell a couple hundred, use it as seed money to make another record, to pay postage on mailing it to radio stations around the country so more people can hear it.

"They said, 'I guess that might be cool and all, but we really don't wanna get into that sort of thing.' But what if you don't sell them all, I asked, don't you want a chance at making enough money off the ones you do sell to break even? 'Oh, we don't want to make money,' they said. 'We just wanna get this music out.'

"I tried to explain, you can get the music out more efficiently, make it go farther, have money to put out more music on a later date, by charging enough to make a sensible little profit. The whole notion that they could make a minimal amount of profit to plow back in was distasteful to them, like it would sully the purity of what they were doing."

The idea that commerce will necessarily "sully the purity" of art is a hoary one, common not only in the highbrow arts that rely on government and foundation grants but in the underground popular arts fed by fan enthusiasm. As one man who works in the distribution of independent records puts it, "Nobody [in the independently produced arts] actually talks about the money because it's considered to be a very insincere source of inspiration, a dirty facet of a dirty business." While its sources are understandable, this attitude hurts artists, depriving them of both audiences and profits, and it helps infect the general culture with the sense that markets by their nature subvert important values.

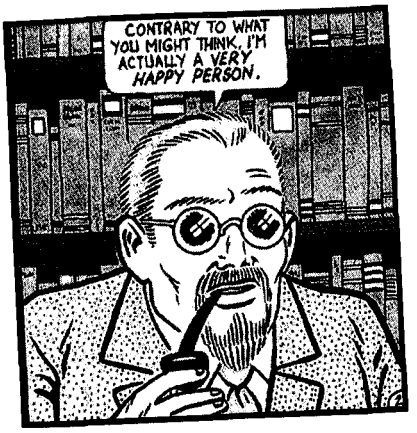


As Hughes's and McFarlane's more balanced approaches suggest,

TOP: © *PUNK PLANET*; BOTTOM: © PETER BAGGE & GILBERT HERNANDEZ

however, something is changing. Increasingly, "indie" artists have the chance to marry commercial interests with artistic integrity—to get their art to more people without sacrificing their vision and, if they're lucky, to make even more money than they might by "selling out" to a big corporation. Entrepreneurship has become a real option for such artists, making trade not a vehicle for corruption but a way to communicate with fans.

Before the late 1970s, this was almost unheard of. Then, in the '80s, whole new ways of doing business arose in comics and rock, allowing artists to retain more control and ownership of their work. In both fields, new distribution networks and trade/commentary magazines developed to help sell and publicize these works, which appeal to a more limited audience than mass-market comics and rock. New technologies, such as desktop publishing and relatively inexpensive digital recording and manufacturing technologies, reduced the capital needed to enter the comics or record business. Today, starting a record company or publishing a comic book takes less capital than buying a five-year-old Honda Accord.



Some "indie" companies are just small, while others are actually run by the artists themselves. Either way, they're distinguished by their independence from big corporations. The large, traditional companies tend to take a more authoritarian hand in running artists' careers; retain ownership of all the characters and music; take a larger slice of any income; and are generally more bureaucratic. The deal they offer artists isn't all bad, of course. Big publishers and record companies also take care of key business details that can be as important to getting the work out as actually drawing the comics or playing the music.

Colleen Doran, creator of the formerly self-published comic book *A Distant Soil*, learned this lesson the hard way. Although she had publicly celebrated her independence from corporate paymasters, she relented last year, moving her comic book over to Image. Self-publishing, despite the freedom, has its downside, Doran explained to *The Comics Journal*: "You just don't have any clout when you're all by yourself....You can't negotiate, you can't get the best prices on printing...because you're just a single person. Your printer knows it, your distributor knows it....You just don't have any power."

Although Doran still owns her characters with Image, some of her fans did not approve of that compromise. In much of the indie world, self-publishing itself has become tied up in the "commerce sullies art" mentality. From the reaction of a vocal group of self-publishing acolytes, "You would have thought I'd raped someone's grandmother," she says. "The fans now perceive that self-publishing...is more important than our role as creators and the creation itself."

Self-publishing is "something of the '90s fad movement thing for hip creators to do," another former self-publisher, Matt Wagner, told *The Comics Journal*. To audiences used to consuming less-obscure portions of popular culture—television, movies, books—this whole issue might seem senseless. Who cares who sells or owns the cultural products you want? Besides, artistic self-production is almost unknown in other areas of pop culture, and is often considered disreputable.

In fact, when comic book artist Paul Pope began self-publishing in 1991, he created a phony persona to be his publisher. "My understanding was that self-publishing had this vanity stigma, and I wanted to avoid that," Pope says. "But when I started meeting other people in the comic business, I realized I was wrong. Literary self-publishing and comic self-publishing are perceived very differently." Not only is it not an embarrassment, there's an audience that considers it a definite plus. (Pope self-publishes his *THB* and also works for bigger companies, including the Japanese mega-publisher Kodansha.)

"Indieness" can be its own marketing tool. In the record field, many big labels create new subsidiaries to try to seem indie, emulating cheap-looking ad and promotion techniques that indies use out of financial necessity. (This same phenomenon can be seen now in the beer industry as well, where big breweries create new names to emulate hip microbrews.) And the small-press and self-published end of the comic market has been slowly gaining a larger market share—although that share is still small (about 5–10 percent)—of a rapidly collapsing market. (That share excludes Image, since its size and mostly superhero focus make it a slightly different animal, even though its characters are creator-owned. Even market leader *Spawn* has gone from a 1993 high of sales over a million copies to sales today of 160,000.)

Jeff Mason, who publishes *Indy*, a magazine dedicated to the world of self-published and small-press comics, explains the attraction: "It's very important to own your own thoughts. Selling your thoughts or signing away the rights to your thoughts is anathema. The idea that you can create something and it's not yours at all is bad. I want to give support to folks that are doing their own thing. If you don't own it yourself, you are at the whim of the person paying you. You aren't free to do what you want, you can't take risks, you can't create. Companies like Marvel and DC are like committees, and you can't create by committee. Committees don't tell stories, they just make demands." His magazine focuses not just on self-published comics but on any creator-owned comic.

Mason has a point—and provides insight into one reason why these audiences of pop culture cognoscenti fret over issues of ownership and corporate control. The world of small comics has delights to the discerning fan that one more fist fight between Spider-Man and Dr. Octopus just can't offer. The recent wave of deeply personal naturalistic autobiography in small comics—one of my favorite trends—isn't the sort of fare that adolescent-power-fantasy–oriented big companies provide. And Dave Sim's *Cerebus*, a self-publishing pioneer started in

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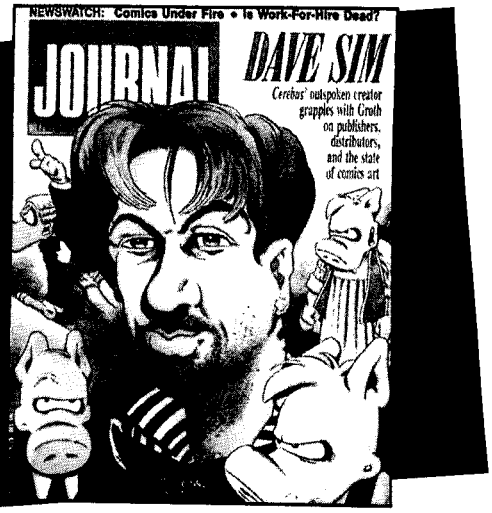
Cerebus artist Dave Sim is able to make sure that his entire life's work is always in print and always generating income for him. Even small niche markets can be lucrative when the creator controls *all* of the income stream.


NEWSWATCH: Comics Under Fire • Is Work-For-Hire Dead?
JOURNAL
DAVE SIM
Cerebus' outspoken creator grapples with Groth on publishers, distributors, and the state of comics art

1977, is doing something no big company has done: presenting a unified 300-issue-long narrative telling the entire life story of one character (a talking aardvark embroiled in the political and religious struggles of a mythical pre-industrial world), written and drawn by the same creator throughout.

But Sim is getting more out of self-publishing than creative freedom. Sometimes artists can have it all: integrity, freedom, and filthy lucre. Sim, for example, takes only $40,000 a year in salary from his company, but it owns a home for him to work out of, has no debt, and grosses half a million dollars a year. (Sim won't specify the net, but says it's "considerably" less.) His lack of debt, Sim says, "puts us well ahead of Time Warner, in my view." All this from selling his comic book to a monthly audience that has never topped 30,000 and now hovers around 12,000. The real money comes from repackaging his old comic books in large book collections. Sim is able to make sure that his entire life's work is always in print and always generating income for him. Even small niche markets can be lucrative when the creator controls *all* of the income stream (minus the distributors' and merchants' shares).

Sim, to his credit, has never played the traditional "artists should starve in a garret for their art" role. He is known in the industry for his extravagant spending on travel and entertainment. A *Comics Journal* editorial once referred to him as "a man...who stays at the Savoy in London and serves his guests Beluga caviar while making pronouncements on such subjects as the greed of publishers." He regularly runs photos of himself in exotic vacation spots on the back cover of *Cerebus*.

Through much of 1995, Sim devoted both cover space—unheard of in a commercial comic—and long text pages at the front of his comic to advertising for the "Spirits of Independence" tour, a series of local conventions promoting independent creators and heralding the advantages and growing popularity of self-publishing among comic artists. He emphasizes the importance of maintaining control over how much of your work stays in print and available for sale. Even the large cash advances big companies can provide, Sim suggests, can pale in relation to the constant and long-lasting income stream total ownership of your work can provide.

Sometime self-publisher, sometime corporate employee Paul Pope agrees. He does see an aesthetic distinction between the comics he self-publishes and the work he does for bigger companies. "I put the more meaningful stuff out myself, the stuff that's important to me on a philosophical level as well as financial—the stuff I'm willing to take a 100 percent risk on. And with any investment, you're going to want to be able to get returns over time. The saving grace of self-publishing is that the decision about how long something stays in print and earning money is mine."

This is a lesson learned, in the underground rock field, by Mark Robinson, formerly of the band Unrest. Robinson has run his own label, Teen Beat Records, out of Arlington, Virginia, for 12 years. His band Unrest achieved popularity beyond his label's capacities—Robinson thought it too difficult to get the money together up front to pay for the recording and manufacturing costs that Unrest demanded. So he and the band signed first with a subsidiary of Virgin Records in the late '80s and then with a subsidiary of Time Warner in the early '90s.

Robinson ended up dissatisfied with the level of creative control over packaging he got from the Time Warner subsidiary—less than he was promised—and thought that in some cases he could have sold as many copies on his own as the bigger companies did. Now he doesn't own the music and has no say

TOP: © DAVE SIM & GERHARD; BOTTOM: © PETER BAGGE & GILBERT HERNANDEZ

over keeping it in print. If he still controlled all of Unrest's records, Robinson says, he could still be making money off of them and attracting more wholesaler attention to his small label by offering the desired Unrest albums. (The rights to the Virgin subsidiary's records revert to Robinson after 10 years, though the ones with the Time Warner subsidiary are gone forever, he says.)

Robinson's dilemma limns a mostly unspoken truth about the indie ethos: "Selling out" can sometimes be less lucrative than the integrity of independence. This is especially true for the two most quoted avatars of independence from the corporate machine in rock, Ian MacKaye of the punk band Fugazi and Washington, D.C.'s Dischord Records, and Ani DiFranco, modern folk/punk troubadour.

If the Sex Pistols showed would-be punk kids that anyone could be a rock musician, MacKaye holds a similar place of honor in punk history for showing them that they could also control the production and sales of their own records. Looking over Fugazi's press clips, one finds MacKaye talking about "people who are into doing this music for life, not making any money out of it, but doing it because they have to" and how his label's goal was "not to make money, but to help as many of our friends' bands as we could." Fugazi has been the loudest and most steadfast holdout—especially in the post-Nirvana indie-rock feeding frenzy among the major labels—for strict independence and low ticket and record prices. *The Washington Post* once wrote that Fugazi's "rigid adherence to these precepts gives the band that most valuable of intangibles: integrity."

Still, that integrity has a very tangible reward: money. Fugazi alone has sold over 1 million records. While MacKaye wouldn't discuss total income for his label or band, I run a small indie rock label myself and have some sense of the costs involved. Even given overhead that's much higher than mine (Dischord has a half dozen employees who receive a full panoply of health and other benefits), I can't figure that Fugazi is netting any less than $2.50 per CD, and probably more. (The issue is complicated because Dischord's bands are paid a pure profit split, and MacKaye is both part owner of the label and a band member.) From there, the math isn't hard. Having the integrity to collect all of the money off your work leaves you with something more than just integrity to take to the bank.

That doesn't mean that making the money was your main goal, which is the distinction important to MacKaye—and he is definitely sincere. "Rock 'n' roll is an insidious collision between art and business," he tells me. "I'm in this parallel but valid industry and I'm self-sufficient. I just feel much more comfortable doing it this way. It makes more sense, and I understand the air here."

MacKaye proudly describes how he grew up in D.C., a town the record industry ignored, and built a thriving company off his own band's efforts and savings. As a young man in his first band, the Teen Idles, he was "disgusted by the way the rock 'n' roll industry worked. It was all packaged and had no organic aspect. Then I came across punk rock, and I felt comfortable here. Profit isn't the final motive in punk rock. People's ambitions were much more creative. It's not to make money, it's to play with ideas. Making money is an addiction that is very tedious." Of course, making money can make "playing with ideas" easier, and spread those ideas farther, as Hughes, the Gainesville record store owner, tried to explain to the amateur record-label owners.

I TRY TO PROJECT THE IMAGE OF BEING JUST YOUR AVERAGE RUN-OF-THE-MILL "MAN OF THE PEOPLE."
IT HELPS TO HIDE THE FACT THAT I'VE GOT AN EGO THE SIZE OF MOUNT EVEREST.

Despite his concerns over the addiction of money making, MacKaye is—as he should be—comfortable with his own money. "I'm confident that I'm responsible and am doing things that are useful and reinvesting in things I can believe in," MacKaye says. Fugazi's success allows him to support other local D.C. bands on Dischord that only sell 3,000 records.

Ms. magazine cover girl Ani DiFranco is the current sensation of the radically indie philosophy in music. She told *The Washington Post* that the music business is "dehumanizing and exploitative"—and "not much different from any other big business," so she sells her records through her own Buffalo-based label, Righteous Babe Records. *Forbes*, praising her business savvy, reports that she pulls in an average net of $4.25 per CD sold, with 260,000 sold in 1996. The Artist Formerly Known as Prince, who mused publicly about going totally indie after his acrimonious split with Warner Brothers, but instead now runs his own NPG Records through a manufacturing and distribution deal with EMI/Capitol, said it best to *Forbes*: "I *love* Ani DiFranco. She's making $4 a record and the superstars are making $2, so who's got the better deal?"

And the superstars are doing a lot better than smaller-sales artists like DiFranco could realistically hope to on major labels. Typical new artist royalties amount to around $1.30 per unit, says New Jersey musicians' manager Gary Waldman, who was vice president of MegaForce Records in the '80s. And those royalties only kick in after, on average, 300,000 units sold, because big labels charge all recording fees, advances, production costs, and most promotional and touring costs against artist royalties.

On a major label, an artist can easily sell as many records as DiFranco and still not see a penny past the initial advance. The *Buffalo News* writes that DiFranco is about "talent, art and integrity winning out over the usual record business pitfalls of hype, money and conformity." DiFranco is a nonconformist. But, says Waldman, "Ani DiFranco is making a much better living than she would through a major label." The truly cash-minded, greedy musician would do well to nonconform along with Ani. And with her leading the way, it is increasingly possible that some superstar on the Prince level will take the financial risks of going indie to reap the possibly greater rewards. (The risks include both the upfront money the artists

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For a long time Fantagraphics didn't run outside advertisements in its comics, assuming that its sensitive artists would object to this invasion of commerce into their realm. That wasn't always true. "When I found out I could get more pages in my comic and keep the price steady by running ads, I said, absolutely!" says *Hate* artist Peter Bagge.

would have to pay for recording and manufacturing, and the less-than-perfect distribution and promotion system for indies—though the more superstars go that route, the better the distribution would become.)

I ask Dischord's MacKaye whether, given the realities of major label financing, he thinks Fugazi could conceivably do better financially with a major—whether his business decisions not only fit with his independent sensibilities but make good financial sense as well. "That's too hypothetical a question," he responds sharply. "I don't give a fuck. I don't spend my time trying to compare relative incomes of various possibilities." He then goes on to explain how Dischord began from his pure motive to do what he wanted to do. Granted. But as much as I respect MacKaye for sticking to his principles, it seems strange that he is so reluctant even to discuss the financial benefits that follow his principles. Those benefits are an integral part of small-business capitalism, even if MacKaye's punk rock background doesn't encourage defending that dirty word.

The tension between entrepreneurial reality and anti-capitalist ideology is becoming increasingly apparent in indie art. Since the early '80s, the 'zine *Maximum Rock 'n' Roll* has been the Bible for young punks—the main ideological enforcer of the anti-money, anti-corporate line in amateur punk rock and the place where younger fans learn what it means to be properly punk. The Berkeley-based 'zine used to run a column by Lawrence Livermore, former operator of the indie punk label Lookout! Records. When Lookout! artists Green Day hit it big, and the company began making millions (though Green Day left them for Warner Brothers), the *MRR* crowd turned on Lookout! with such ferocity that a weary Livermore sold his interest in the label and left punk rock behind, announcing his defection in a column in *Punk Planet*, a rival 'zine founded in 1994. By contrast, *Punk Planet* sees Lookout!'s success as a triumph.

"They made money by putting out good records. I don't think they should be faulted, they should be heralded," *Punk Planet*'s editor, Daniel Sinker, insists. "Now their employees have health insurance and the bands are getting paid well. The difference between them and the majors is that the majors don't exist to put out good music—they are just arms of major corporations to make money for it. They wouldn't care if it's records or microwave ovens."

Sinker believes in companies that care about music over money. (He refuses ads from major labels.) But he recognizes that the business of selling music, however small-scale and independent, is, well, a business. *Punk Planet* ran a long March/April cover story analyzing what Sinker calls the "lie of punk"—the notion that punk rock exists in a Platonic realm of purity, in opposition to the dirt and greed of capitalism. "You have to bludgeon people over the head with the idea that making and selling records is capitalist, and that's what punks do," Sinker says. *Punk Planet*, with its more realistic attitude toward commerce, has risen in sales from 800 copies of its first issue to 7,000 now. (*MRR* sells 13,000.)

Often in indie pop culture, people try to disguise business realities. But acknowledging it can encourage institutions that protect artistic control without eschewing commerce and, in turn, expand the opportunities to create art. Peter Bagge draws the popular alternative comic *Hate* for the small publisher Fantagraphics. While he doesn't self-publish—he doesn't want to cope with all the necessary business details—artists who work for Fantagraphics do retain ownership of their characters and art. (This is true of many newer, smaller comic book publishers.) Fantagraphics pays its artists purely royalties based on sales and re-

ONE OF THESE DAYS I'M GONNA WRITE A BOOK CALLED "REASONS NOT TO GO INTO THE CARTOONING BUSINESS..."
I FIGURE IT'LL BE THE BIGGEST FAVOR I COULD POSSIBLY DO FOR HUMANITY.

TOP: © PETER BAGGE; BOTTOM: © PETER BAGGE & GILBERT HERNANDEZ

tains a small percentage interest in merchandising, though the artist has approval over merchandising deals.

For a long time Fantagraphics didn't run outside advertisements in its comics, assuming that its sensitive artists would object to this invasion of commerce into their realm. That wasn't always true. "When I found out I could get more pages in my comic and keep the price steady by running ads, I said, absolutely!" says Bagge. "If I knew I stood to gain, I would have done it from issue one." Now Bagge's comic book features more pages, but with the same cover price. He uses those extra ad-driven pages to run backup features by other artists, thus exposing them to his larger audience. Many of his fellow Fantagraphics artists have followed suit on the ad question, although some are still holding out.

Bagge has been on the receiving end of shouts of "sellout!" from purist fans for changing his comic to color from black-and-white, for running ads, for adding UPC codes to the cover. He expects more such carping if he seals the deal he's working on to sell a cartoon based on his characters to a cable network. "If I tell my next door neighbor, who doesn't care about the comic book world, he'll say, 'Great!' He'll be disappointed if it *doesn't* happen," Bagge says. "But among the comic book people, I'll hear all sorts of nasty comments, and almost to a man people criticizing me will be doing it from resentment."

More than just resentment is at stake, though. Advocates of independence often believe in the propriety of what they do on an ideological level that goes beyond just business sense. For example, a leading small comic publisher, Caliber, and a leading indie record label, Simple Machines, both issue pamphlets explaining step-by-step how individuals can manufacture comics or records themselves. This is not usual corporate practice, to say the least—actively instructing your customers on how to compete with you or do without you.

Audiences for smaller-circulation music and comics often feel special because of the pop culture they choose, set apart from the thoughtless throng. This attitude can be self-indulgent, a way to prop oneself up at the expense of the herdlike masses. As a reader of indie comics and a producer *and* consumer of indie rock music, however, I know there are often-important aesthetic distinctions between small-company and self-produced pop culture and the larger mass pop culture. Without getting into extended aesthetic arguments, music outside the limited range of commercial sounds available on contemporary rock radio is just more interesting and exciting. When SST Records, a 1980s indie rock powerhouse and early home for such bands as Sonic Youth, Dinosaur Jr., Soundgarden, and the Meat Puppets, sold bumper stickers reading "Corporate Rock Sucks!," they meant it for both business and aesthetic reasons.

That punk rock attitude has spread throughout most underground youth culture arts; the audiences for underground music and comics largely overlap. As comic book artist Evan Dorkin once told *The Comics Journal*, "People who like stuff that's hard to find tend to like stuff that's hard to find in every medium. They just develop this attitude that, 'I'm not going to find my stuff at Tower Records, at B. Dalton's bookstore.'"

Meanwhile, the community aspect of the independent arts adds a level of non-cash-oriented play to these small markets—an aspect that is often hidden in big corporate capitalism. The richer our world becomes through the workings of capitalism, the more considerations of play can work alongside the bloodless financial calculations that prompt cries of "sellout!" from indie purists.

After years of refining their tastes—and becoming jaded about the often crude pleasures of more mainstream rock and comics—certain cognoscenti are indeed going to find more pleasure in small-circulation products for aesthetic reasons that go beyond mere snobbery. But anti-mass-market snobbery is hard to get rid of. In Washington, D.C., various indie labels get together for an annual "Indie Rock Flea Market" in which bands play, food is served, and labels and bands set up tables and sell records. In 1994, the local "commercial alternative" station—anathema to the true-blue indie rock fan—set up a booth. Two indie fans were disgusted, *The Washington Post* reported: "The mass marketing of their beloved subculture has devalued its music."

Such snobbery ignores some of the real benefits of money for small pop cultures. Ian MacKaye's Fugazi money supports many other bands. The money made by one of the creators of *Teenage Mutant Ninja Turtles*, of all mass-market excrescences (though it too began as a self-published parody of mutant comic books, not the kids' sensation it became), supports the Xeric Foundation, which gives grants to destitute young comic book artists to allow them to self-publish. The relationship between capitalism and lively underground culture can be complex.

The comments of one of the organizers of the Indie Rock Flea Market are revealing: "I just wanted to create a venue where the demographics were all the same, where everyone liked the same stuff."

"Everyone liking the same stuff" is the language of the fan seeking an isolated, small, simpatico community, one of the driving values behind small, alternative artistic subcultures. "Demographics" is the language of people trying to sell you something. They can mean the same thing. One does not rule out the other—and doesn't everyone, creator and audience, benefit from being able to buy the things we want?

As Gary Groth, owner of Bagge's publisher, Fantagraphics, and editor of *The Comics Journal*, puts it: "A lot of anti-corporate talk can basically be self-serving greed. It's just another new market: the anti-corporate market."

Brian Doherty (bmdoherty@aol.com) is assistant editor of REASON *and runs Cherry Smash Records, a small independent record label.*

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POLLUTED SCIENCE

New air pollution regulations based on questionable science and creative economic analysis could cost billions and change the way Americans mow their lawns, heat their homes, clean their clothes, and barbecue their burgers. Can Congress stop this regulatory power grab?

The town of Salmon, Idaho, (population 3,100) is being done in by two medium-sized fish and one huge federal agency. Ironically, the fish are the town's namesakes. The presence of two endangered species of salmon in nearby waters forced the town's only real industry, a sawmill, to close two years ago. Now, says Mayor Stanley Davis, "We're the third endangered Salmon."

But it gets worse. Current EPA air pollution regulations have forced the now-impoverished town to convert one of its school's sawdust-burning heaters to propane, at a cost of a quarter million dollars. The other heater will cost almost a half million dollars to convert—if the town can find the money.

And it gets worse yet. Idaho has informed the town that Salmon will not be in compliance with proposed *new* EPA air pollution regulations, which could require the conversion of every home's heater. Salmon's population density, incidentally, is close to nothing—one resident per 500 acres. Its air pollution "problem" comes not from smokestacks but from

BY MICHAEL FUMENTO

dirt roads and the occasional forest fire on surrounding federal lands. "It's usually about as pristine as you can get," says Davis. "It's as if the EPA regulations are designed for us not to be here. We just can't comply." If it's any solace, Salmon will have a lot of company: Much of the nation won't be able to comply.

Call it the November Surprise. Three weeks after Bill Clinton was safely re-elected, the EPA unveiled proposals for what *Industry Week* has called the most "explosive" and perhaps most costly regulations the EPA has ever promulgated. The agency and its boss, Carol Browner, claim the new restrictions, purportedly based on the best information science has to offer, will prevent 15,000 premature deaths annually, head off 500,000 respiratory illnesses annually, and improve air quality for 130 million Americans. And not only will this cost us essentially nothing, it will boost the economy!

Sorry, but you know what they say about things that sound too good to be true. In fact, the proposed standards will cost localities that try to comply a fortune. The EPA's bureaucratic tentacles will be extended into new areas—personal and geographic—that a few years ago would have been unthinkable. The effects of the proposals may cause some of us physical harm. And as far as the science is concerned, the EPA's position is so meritless that one of the nation's leading air pollution experts has called it the equivalent of "witchcraft."

The proposed standards, which the EPA intends to impose in final form in July and start enforcing in 2002, would become part of the National Ambient Air Quality Standards of the Clean Air Act. They are aimed at reducing two types of pollution.

The first is particles in the air, called particulates. Particulate matter, abbreviated as PM, can be solid or liquid. It can be emitted directly, or it can be formed when gaseous pollutants (called "precursors") react. One common way of categorizing PM is by size. Thus "PM10" includes particles 10 microns wide or smaller. (A micron is a millionth of a meter, or one-hundredth the width of a human hair.) While the EPA now regulates only PM10, the new standards would also specifically regulate "fine particles," 2.5 microns wide or less, called PM2.5. Most PM2.5 comes from the precursors sulfur dioxide (largely from power plants and factories) and nitrogen oxide (mostly from power plants, factories, and vehicles). When these chemicals combine with oxygen, they are transformed into fine particulates.

The second type of pollution is ground-level ozone, better known as "photochemical smog." Ozone is formed when two different precursor gases, nitrogen oxide and volatile organic compounds, or VOCs (mostly from vehicles but also from paints, barbecues, and industrial processes such as baking and dry cleaning), mix together and are "cooked" by sunlight.

The EPA readily admits, and has published data that clearly show, that the levels of all these pollutants are already dropping, as you can see from Table 1. The agency's annual report, released in December, showed that all six of its target pollutants, including ozone and particles, have been declining steadily for 10 years. Overall, the measured pollutants have decreased nationally by almost 30 percent, even as population has increased by 28 percent, and vehicle miles by 116 percent.

So why the new action? Because the American Lung Association sued the EPA on the grounds that the 1970 Clean Air Act says the administration must review its criteria every five years, and the EPA had not done so for particulates. The ALA won, but all it earned was a review. Nobody ordered the EPA to set a new, tighter standard; that was the EPA's own decision.

Table 1
Summary of Air Quality and Emissions Trends
(1986–1995)*

	Percent Decrease in Concentrations	Percent Decrease in Emissions
Carbon Monoxide	37%	16%
Lead	78%	32%
Nitrogen Dioxide	14%	3%
Ozone	6%	+
PM10	22%	17%
Sulfur Dioxide	37%	18%
VOCs	@	9%

* PM10 measurements began in 1988

\+ Since ozone is not directly emitted, but rather forms from other emissions, it isn't measured under this category.

@ Since VOCs are emitted as such but become other things in the atmosphere, they aren't measured under this category.

Source: EPA

The agency also decided to propose a stricter ozone standard because, it said, there are factors common to both ozone and particulates emissions. But the same could be said of many other types of emissions, as Jack Gibbons of the White House Office of Science and Technology Policy has pointed out in urging that the ozone standard be delayed. Gibbons is one of many people, from scientists to administration officials to prominent liberal congressmen, who are only a little less outraged and befuddled than Mayor Stanley Davis and his Idaho neighbors. This time, maybe—just maybe—the EPA might not get its way.

Something in the Air

The current standard for ozone is no more than 0.12 parts per million (ppm) during the highest-level hour each day. An area may exceed this standard only three times over three years. In its new proposal, the EPA recommends a maximum of 0.08 ppm, averaged over eight hours. Under this new standard, the agency would take the third highest eight-hour concentration each year from each monitor, and average it with the third highest from that same monitor for the past two years. If that average is over 0.08 ppm at any monitor, the area would be out of attainment and must take action. If that confuses you, don't worry. It's not a big point of contention. In fact, even most EPA critics say that this is one part of the new proposal that makes sense, since an area is less likely to be tipped out of compliance due to unusual weather.

For most people, ozone becomes unhealthy—causing coughing, shortness of breath, chest pain, and so forth—well above

the current EPA standard. These effects are usually temporary, and may always be so. Except for those exercising strenuously, few people notice their own reaction to ozone. But a small portion of the populace experiences significant loss of lung function at relatively low ozone concentrations. These people are called "responders," and it's quite possible that for some of them ozone causes problems all the way down to the so-called background level: No matter where you set the standard, some responders will suffer. But there aren't many of them. According to EPA estimates, in a city of 1 million, there might be three added summertime hospital admissions per day if the ozone level tripled from a background concentration of around 0.05 ppm to 0.15 ppm.

Even so, the new standard is so tough that according to the agency, it would more than double the counties out of compliance, from 105 to 228, and there could be many more. In at least some areas it would require eliminating essentially *all* man-made ozone precursors, and maybe even some natural ones: A significant amount of VOCs can come from green plants. Canada's version of the EPA, Environment Canada, commissioned a report in 1989 finding that the vast majority of the VOCs in that country's air come from plants, especially trees.

Lower ozone may benefit some people but harm others, because ground-level ozone is a shield from ultraviolet light, just as is stratospheric ozone. Among the possible results, according to the Department of Energy, are increased melanoma (with 25 to 50 fatalities) and nonmelanoma skin cancer rates, and more cataract cases. But the Clean Air Act doesn't require the EPA to take such effects into account, so it didn't.

For particulates, the current PM10 standard allows an annual average concentration of 50 micrograms per cubic meter of air, and a maximum of 150 such micrograms in a 24-hour period. But concern has grown that the worst particles are PM2.5. "The scientific evidence indicates that very small particles pose the greatest risk to human health and are most likely to lead to respiratory complications, including death," Carol Browner said in announcing the standards in November. (On another occasion, the EPA administrator said, "The smaller particles that penetrate farther into the human lung present the greatest risk." But that wasn't Browner. It was William Ruckelshaus, proposing the current *PM10* standard in 1984.)

Anyway, PM2.5 particles are the most likely to lodge deeply in the lungs, though they are eventually expelled or dissolved. The new standard would allow no more than a yearly average of 15 micrograms of PM2.5 per cubic meter of air, with a maximum 24-hour average of 50 micrograms.

By regulating PM10, the EPA already regulates PM2.5, because it's a subset—just as regulations concerning all cars are regulations on small cars. Indeed, roughly speaking, if you collected a pound of PM10, about eight ounces of that would be PM2.5, though this varies from region to region. But specifically regulating PM2.5 would put more focus on both monitoring and eliminating those particles. The relevant numbers are in the table on page 31.

Once you've learned these numbers, you can forget them, so long as you keep this in mind: By everybody's estimation, the requirements of the proposed EPA standard are going to be a lot harder to meet. Most primary PM2.5 is from dust, soil, and wood burning, leading some opponents of the EPA's proposal to state erroneously that these are the greatest contributors to PM2.5 in the air. When you take into account the precursors, the major source of PM2.5 is really the burning of fossil fuels, especially coal. To get fewer such fine particles means burning less such fuel, or burning it more cleanly.

The EPA considers 41 counties out of compliance now; if we switch to the new standard, that will more than quadruple, to 167. For each such county, the EPA can threaten to withhold highway or other funds, forcing local authorities to implement controls on businesses and citizens. "The EPA is more like the Don, making local governments the hit men," says Bonner Cohen, the editor of the newsletter *EPA Watch*. These hit men, in turn, make local citizens offers they can't refuse. Businesses can be ordered to change practices; car owners can be made to add equipment; building permits can be denied. In Southern California, such regulations (not as strict as the new ones) have had a devastating effect on industry, forcing many companies to flee the state or go south of the border to Mexico.

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The EPA and its allies would have you think there isn't the least doubt that particulates at current levels are a cause of illness. They speak loftily of a "fairly consistent and robust relationship," in the words of one national health official, between particles and health problems ranging from coughing to death. Browner is not only on the side of the angels, she says; she is on the side of solid science. In her February testimony before Congress, she said the EPA's Clean Air Scientific Advisory Committee (CASAC) had reviewed "86 studies...indicating that our current air standards are not adequately protecting the public's health." It's a number she repeats as if it were a protective mantra.

In fact, most of the major studies were conducted by a tiny number of researchers, none of whom have medical degrees. Moreover, a large number of legitimate, highly respected scientists question the whole PM2.5—and even PM10—paradigm. They've published their doubts in major, peer-reviewed medical and scientific journals, but since these are the "wrong" conclusions, the EPA has ignored them. Consider the shootout in Utah Valley, where the controversy began.

How Grim Was My Valley?

On a clear day in Utah Valley, you can see, well, pretty darned far. But when there's an air inversion caused by the trapping effects of the Wasatch Mountains to the west, a yellowish-brown haze covers much of the sky "as if somebody put a lid above the top of a trash can fire," in the words of one former resident. If air pollution at current levels were killing Americans, you'd expect it to be happening here. And you'd find it relatively easy to detect, because you wouldn't have to worry much about smokers (the populace is overwhelmingly nonsmoking Mormons), who can cloud statistics about pollution health effects. Sure enough, an enterprising economist from Brigham Young University looked for a correlation between pollution and illness here, and he found one.

C. Arden Pope made a splash in 1989 with an article in *The American Journal of Public Health.* He'd studied health effects from a shutdown (due to a strike) of the Geneva Steel Mill, which, according to Pope, contributed anywhere from half to 80 percent of all the particulate pollution in the valley's air. Pope's conclusion: "PM10 levels were strongly correlated with hospital admissions." Indeed, reported Pope, "children's admissions were two to three times higher" when the mill was open than when it was closed.

Pope's work is the bedrock of the EPA/environmentalist position. But Pope's findings have nothing to do with particulates; rather, they are explained by contagious disease. "Every other year the Utah Valley has an epidemic of viral bronchiolitis, an infection of the tiniest tubes in the lungs," explains Joseph Lyon, an M.D. and a professor of epidemiology at the University of Utah. "It raises hospitalization rates dramatically. The year when the steel mill was closed was a low year for this disease." Data he and others presented in the January 1996 *Journal of Pediatrics* show exactly that. During the epidemic years, children's hospitalization rates for respiratory problems increased 250 percent over odd-numbered years. This correlates exactly with Pope's findings. Sure enough, the plant happened to have been closed during a nonepidemic year.

Three years later, Pope, along with another researcher at Brigham Young and Joel Schwartz, a former EPA researcher who now works at Harvard, looked for a correlation between high PM10 levels in Utah Valley and higher death rates. They said they found one. Although in sheer numbers the increases were small—on average only two or three people die in Utah County (where Utah Valley is) each day—the highest particulate jumps, they said, led to a 16 percent increase in deaths.

Examining these results, Lyon and his colleagues at the University of Utah Medical Center used Utah County data for six consecutive years and found that in four of them, there was indeed an association between high PM10 levels and more deaths and hospitalizations for respiratory diseases. But for two of those years, there was no correlation. Why would PM10 kill and injure in four years, but not the other two?

In another study, published in the journal *Inhalation Toxicology*, Lyon and colleagues found no significant increase in deaths following increased levels of PM10 in the air for any of eight years studied. They did find such an increase in two of the eight years for cardiovascular disease, but not the other six.

Then Lyon and his colleagues compared Utah County with Salt Lake County. The adjacent counties suffer the same air inversions, and while Utah County has the steel plant, Salt Lake County has a copper smelting plant that puts out more particulates. In any case, says Lyon, "There is a substantial air mixing between the two counties." What did he find? "We essentially found no association in Salt Lake County to PM10," says Lyon. "There was simply no effect."

Lyon says that "if the relationship is causal" between particulates and hospitalizations, "you'd expect it to be pretty consistent. Yet we have found an association that in some years isn't present, and is inconsistent when comparing two counties that share the same air. So just how causal can this thing be?" Others have come to the same conclusion, among them Patricia Styer and others at the National Institute of Statistical Sciences (NISS), who studied both Salt Lake County and Cook County, Illinois, in 1995 and concluded in *Environmental Health Perspectives* that "[t]he reported effects of particulates on mortality are unconfirmed."

But to the EPA, environmental groups, and the media, Pope remains infallible. Along with Schwartz and another Harvard researcher, Douglas Dockery, Pope has become one of the Particle Hunter Triumvirate. Indeed, when you look at all the American studies that find particles causing health associations, these three names keep popping up as the authors.

Little Things Mean a Lot

In Birmingham, Alabama, Schwartz found that deaths went up when PM10 went up. In a separate paper, he showed that increases in PM10 and hospital admissions among the elderly were linked. Jonathan Samet of Johns Hopkins University (who, unlike Schwartz, has medical credentials) did an evaluation of these studies for the Health Effects Institute and confirmed

Table 2

Current and Recommended Ambient Air Quality Standards for PM10*

	Current EPA	Proposed EPA	Recommended NRDC	Recommended ALA
24-hour average	150	150	33	50
Annual average	50	50	17	30

Current and Recommended Ambient Air Quality Standards for PM2.5*

24-hour average	No standard	50	20	18
Annual average	No standard	15	10	10

*micrograms per cubic meter of air

Source: EPA, ALA, NRDC

Schwartz's findings. Thus, there are three different papers showing that PM10 levels in present-day Birmingham are high enough to cause harm, even death. Case closed? Not quite.

Because swings in temperature can hospitalize and kill, good particulate studies take temperature into account. The Birmingham studies did this. But what they didn't account for is one of Birmingham's most distinctive features—summer humidity that wraps you up in a hot, sticky blanket of moist air. Researchers at NISS in North Carolina, an area known for its own humidity, did account for it when they did a follow-up study of Birmingham. In an as-yet-unpublished report funded by the EPA, NISS factored in humidity changes and found that both for illness and death "the PM10 effect is not statistically significant."

It may be surprising that a factor like humidity can invalidate the results of such a study. But it's less so if you understand that one of the most consistent features of particulate studies is that they are anything but "robust." When researchers do find an increase in deaths or illness, it's always a tiny one. "The relative increase in total mortality and morbidity associated with a 50 percent increase in air particulates is not large," admitted CASAC member and University of North Carolina epidemiologist Carl Shy in his congressional testimony backing the EPA's proposed standard, "being on the order of 5 to 10 percent above [that] on days with the lowest concentrations." But he added that because this was spread across such a large population, you could be talking about a lot of sick and dying people. That misses the point, which is that when you have just a tiny increase, any little mistake in your methodology could account for it.

In other contexts, the public health community argues that such increases are meaningless. After one study suggested that

A Revolting Administration

Industry doesn't like the proposed new EPA regulations? What's new? Many scientists think they're unsubstantiated? So what? But the EPA's proposals are so absurd that even members of the Clinton administration are objecting.

Last November, before issuing its proposals, the EPA solicited comments from other branches of the administration. In March, via a leak, many of these comments came to light. What they showed was that the EPA had gone forward with its proposed standards even though many parts of the executive branch had expressed sometimes strong disagreement with them. To quote the Associated Press, these concerns were "only slightly less intense than the criticism from industry groups, members of Congress and state officials." Among the critics were members of the president's Council of Economic Advisers, the White House science adviser, the Commerce, Transportation, Treasury, and Agriculture departments, and the Small Business Administration. Only the Interior Department completely approved the EPA proposal.

Assistant Secretary of Transportation Frank Kruesi wrote that it was "incomprehensible that the Administration would commit to a new set of standards and new efforts to meet such standards without much greater understanding of the problem and its solutions." He also complained that the proposals would "bring a significantly larger proportion of the population and more jurisdictions under Federal oversight and procedural burdens."

The EPA claims that its proposals will have no significant impact on small businesses, but the SBA is convinced this position is absurd. "We urge the agency to rethink its position," wrote the SBA's chief counsel for advocacy, Jere Glover, who noted that it "would be a startling proposition to the small business community." The "EPA's own analysis" showed the new standards "will unquestionably fall on tens of thousands, if not hundreds of thousands, of small businesses." He wrote that at least 10 and as many as 54 different types of industries whose businesses typically have fewer than 100 employees "would face costs in excess of 10 percent of sales" due to the proposed ozone standard alone. Glover added, in bold type, **"Thus, this regulation is certainly one of the most expensive regulations, if not the most expensive regulation, faced by small businesses in ten or more years."**

Meanwhile, a memo from the secretary of agriculture said, "We share the concerns of the Small Business Administration regarding the potential impacts of these proposals on small businesses. Can EPA address these concerns before the final rule is issued?" It could have; it didn't.

Some objectors said not enough scientific work has been done. "I find it hard to believe that we would suffer more than we would gain by taking more time for further interagency review, consensus building and additional analysis," then-White House science adviser John Gibbons wrote. Others said the science simply didn't support the EPA position. "Current data do not support clear associations of [premature mortality] effects with either fine particles (PM2.5), inhalable particles PM10 or PM15, [or] sulfate, so that causality for the observed mortality and morbidity effects cannot be established," wrote Rosina Beirbaum, acting associate director of the White House Office of Science and Technology Policy, in a memorandum. She added, "The database for actual levels of PM2.5 is also very poor, and only a handful of studies have actually studied PM2.5 effects, per se."

The rebellion didn't end with the November memoranda, nor did the EPA's efforts to squelch it. Last December, House Commerce Committee Chairman Thomas Bliley asked the Office of Information and Regulatory Affairs (OIRA), a section of the Office of Management and Budget, for a reading on the EPA's handling of the air pollution proposal. OIRA is supposed to review economic analyses that agencies are required to prepare indicating that they have regulated in the most cost-effective manner. To help this procedure along, OIRA has prepared a "best practices" document to identify procedures that will provide the best analysis of the impact of a regulation.

women who had undergone induced abortions had a 50 percent higher breast cancer risk, an editorial in the *Journal of the National Cancer Institute* warned that such a difference "is small in epidemiologic terms and severely challenges our ability to distinguish if it reflects cause and effect or if it simply reflects bias." It was a typical reaction to that study and, though politically biased, correct.

But with particulates, a mere 5 percent to 10 percent apparent increase in risk is enough to justify foisting new regulations costing hundreds of billions of dollars on the public. The only federal agency that has ever used such a tiny apparent increase as a basis for regulations was, in fact, the same EPA. That was when the agency decided that a 19 percent increased risk was solid enough to institute sweeping regulations against secondhand cigarette smoke.

Indeed, the particulate studies provide a textbook example of *why* small increases in risk may mean nothing. Merely focusing on different periods of time can completely alter a study's results. Neil Roth of Roth Associates in Rockville, Maryland, looked for a pollution health hazard in Birmingham using later data than Schwartz did. "Ours went from the late '80s into the early '90s, while his were from 1985 through 1988," says Roth. "We did thousands of different analyses on both the hospital admissions and the mortality data," he says, and "found the overwhelming majority of results were not statistically significant. Of those that were, half were positive but the other half were negative. So, in short, we found no evidence of health hazards from particulates in Birmingham."

This happens repeatedly. Schwartz gave Stanford statisticians his data showing a significant association between hospital

On January 15 the committee received a document from OIRA that was generally supportive of the EPA. But this was a revised draft. The earlier two drafts, both drawn up in early January, had horrified EPA officials.

The key sentence of the original 27-page document was, "While these analyses produce much useful information, there were several areas in which they did *not fully conform* to the principles discussed in the Best Practices document." (Emphasis added.) After reviewing the draft, an EPA deputy director within the Office of Air and Radiation, John Beale, wrote to the OMB economist in charge of the project, Art Fraas, complaining that the response placed too much emphasis on differences between the agencies and "could be very damaging" to the proposed rule change. He also repeatedly telephoned Mary Nichols, his direct boss. Prior to becoming the top air pollution official at the EPA, Nichols headed up the Natural Resources Defense Council office in Los Angeles. He urged her to pressure OIRA administrator Sally Katzen, and Nichols did so. Now under pressure from Beale and Katzen directly and Nichols indirectly, Fraas gave in.

The final draft of the report was snipped down to 12 pages. More important, the key sentence had been changed so that it now read, "While these analyses *were consistent with* the Best Practices document and produced much useful information, there were several areas where additional work would have been productive." (Emphasis added.)

That wasn't the only favor OMB was to do for the EPA. The November memoranda were not formal responses to the EPA; the formal responses required by the Administrative Procedure Act were to be submitted in March. Yet the deadline came and went, and the comments weren't turned in. "The comment period for the proposals closed Wednesday, March 12, 1997. No Executive Branch Departments or Agencies, including USDA, submitted written comments to the docket," an undated Agriculture Department memo later stated. In fact, a few agencies had made submissions, including the USDA itself. Among the official comments that squeezed through were the Pentagon's, which said the DOD "believes that the establishment of a PM2.5 [standard] as proposed would critically impact its ability to properly train military personnel" and that already current EPA ozone regulations could "limit military aircraft operations."

But most comments did not get submitted. Why not? Because the OMB stopped them. An e-mail message from Jean Vernet of the Department of Energy to other people within the department dated March 11 stated: "Based on reports from a meeting this morning with Sally Katzen, at which Dan Reicher and Kyle Simpson represented the Department, Federal agencies will not [REPEAT NOT] be transmitting comments on the EPA O3/PM [ozone and fine particle] proposals. To what extent agency comments will be entertained during a yet undefined interagency review effort is unclear." (Emphasis in original.)

"All the [department] secretary-level comments came into OMB, and there was so much discord and problems with the proposed new standards they're proposing that they didn't want to show the administration was so fractured," one USDA official told me on condition of anonymity. According to him, Katzen "said we're not going to show these fractured efforts within the administration." He adds, "Instead of handing in written documents, they've established some kind of interagency working committees to iron out problems. But they will be behind closed doors."

His view is supported by notes I obtained from a November 11, 1996, interagency briefing on the proposed standards, written on the White House Office of Science and Technology Policy's letterhead. "NO meetings with outsiders on this matter!! If someone asks for a meeting, refer them to Sally Katzen. No one who talks to their constituents about these matters will be invited back to future meetings—this MUST be run right [as] it is a 'poster child' for reg reform." (Emphasis in original.) Katzen declined to be interviewed for this article.

—M.F.

admissions and particulate pollution in Detroit. When the statisticians analyzed them the same way he did, they found the same thing. But when they incorporated the potential influence of the day of the week into the model (because people tend to go to hospitals on certain days), particulate matter was no longer a significant factor. Similarly, when Dr. Suresh Moolgavkar, of the Fred Hutchinson Cancer Research Center in Seattle, and other researchers looked at Schwartz and Dockery's work correlating deaths with particulates in Steubenville, Ohio—one of America's most polluted cities—they found no such connection. When Schwartz looked at Minneapolis-St. Paul, he found that particle increases caused more old people to go to hospitals. When Moolgavkar and associates looked, they found the strongest association with ozone.

A Tale of Six Cities

The so-called Harvard Six Cities Study, in which Dockery, Pope, and others compared air pollution and premature deaths in six American cities, is one of the most important weapons in the EPA's PM2.5 advocacy arsenal. Published in the December 9, 1993, *New England Journal of Medicine*, the study found that Steubenville, with the most air pollution and most particulate pollution of the cities, had a 26 percent higher mortality rate than Portage, Wisconsin, the cleanest city.

But what the researchers also found—and what none of the particle pursuers ever talk about—was that among nonsmokers there was no statistically significant difference in deaths between these two cities. Moreover, there was none if you excluded persons with occupational exposures to "gases, fumes, or dust." It was only when including smokers, former smokers, and persons with occupational exposures that the researchers were able to get significant findings. You can see this in the study's own Table 3.

But in the text, Dockery and his associates state, "Although cigarette smoking and other risk factors were associated with a useful idea, but it can cause serious comparison problems: You have to adjust for every health-related difference between them.

Critics note that Dockery and Pope clearly didn't make adjustments. They didn't control for humidity, they didn't control for temperature, they didn't even consider income differences.

Such factors could throw off the whole study: Steubenville is considerably poorer than Portage. "Poor persons tend to die more quickly during extreme weather conditions than wealthier ones," says Roger McClellan, a former CASAC chairman and president of the Chemical Industry Institute of Toxicology in Research Triangle Park, North Carolina. As part of the National Health Survey, a 1996 study found that persons living below the poverty line, for a variety of reasons including unhealthier lifestyles and less screening, are far more likely to become sick than wealthier persons. Persons covered by Medicaid were four to five times more likely to have emphysema, chronic bronchitis, and congestive heart failure than those whose incomes were above the Medicaid qualification level. Fred Lipfert of the Brookhaven National Laboratory in Upton, New York, has also found a correlation between a sedentary lifestyle and premature death in five of the six cities.

"It's anybody's guess as to why residents of Steubenville have a higher risk of dying than Portage," says Moolgavkar. It may be some form of air pollution, he says. "A lot of indices of pollution were higher in Steubenville. Still, I don't think that's enough to say pollution caused the mortality, much less to say it was fine particles."

Pollution by Proxy

Philadelphia, the City of Brotherly Love, has also proven a lovely place for particulate studies. Schwartz and Dockery found that as particulates went up there, so did deaths. Three years later, in 1995, Neil Roth and his colleague Yuanzhanh Li did a follow-up study and found no connection between particulate increases and deaths. Neither did Moolgavkar and associates, who also concluded in 1995 that "no specific pollutant can be singled out as being responsible for the association between air pollution and mortality." Instead, they wrote in the journal *Epidemiology*, "The particulate component of air pollution appears to have become the villain because it is a ubiquitous component of air pollution and thus serves as a proxy measure of pollution." (Jonathan Samet, in an accompanying editorial, agreed this could well be the case.)

Yet Browner speaks of the "consistency and coherence" of the studies on particulates. If there's any consistency at all, it appears to be that the Particle Hunter Triumvirate consistently finds that

While air pollution epidemiological studies often control for aspects of weather, air movement is seldom taken into account. Utility and plant exhaust will be pretty much the same for each day; what will change is what happens to those emissions. Whatever they do, they'll do it together.

mortality, our estimates of pollution-related mortality were not significantly affected by the inclusion or exclusion of these variables in the models." How do they figure that? In the study's Table 4, they abandon the "nonsmokers" category, replacing it with a new one that blurs the distinctions between the "nonsmoker," "current smoker," and "former smoker" categories. Voilà! They have now converted the entire Six Cities Study from negative to positive. Do that in your doctoral dissertation, and you could be in serious trouble. Do it in a medical journal, and you're the hero of the EPA.

But even if the authors had found what they claimed, it would be a very weak study. Comparing one city to another may seem

particles are unhealthy, while other researchers consistently fail to find these same effects when they look at the same cities.

When Moolgavkar refers to particulates as a proxy, he is making a point made regularly by skeptics of the particulate paradigm. When particulate levels rise or fall, the levels of other types of pollution tend to rise and fall, too. This is because these changes are generally weather-related. If a city suffers an inversion and stagnant air, particles will go up, but so will lots of other things, such as pollen. Some of those things can be and are independently measured. Others aren't even looked for or can't be looked for because of a lack of monitors. The result is that particles may just be a proxy, or surrogate, for something else in the air. "If one person who dropped dead had consumed sugar laced with strychnine," says Moolgavkar, "and another who also dropped dead had consumed sugar laced with potassium cyanide, would we blame the sugar?"

Many skeptics believe that particulate research is self-fulfilling. In a paper in *The Journal of the Air & Waste Management Association*, Brookhaven's Fred Lipfert and Ronald Wyzga, senior manager of air quality risk and health assessment at the industry-funded Electric Power Research Institute in Palo Alto, found that focusing on sulfur dioxide or nitrogen dioxide instead of particulates resulted in the same findings for daily deaths. A focus on carbon monoxide showed somewhat *larger* effects. Are all these pollutants causing health problems? Maybe, but probably not. A possible answer is that all these substances are proxies for weather-related effects.

While air pollution epidemiological studies often control for aspects of weather, air movement is seldom taken into account. Yet this is "the main cause in day-to-day changes in ambient concentrations of pollution," notes Fred Rueter, vice president at the Consad public policy research group in Pittsburgh and an adjunct professor at Carnegie Mellon. Utility and plant exhaust will be pretty much the same for each day; what *will* change is what happens to those emissions. Will they blow away or build up? Whatever they do, they'll do it together.

Thus levels of particulates (and emissions) are markers for stagnant air. And "when particulates rise," notes Rueter, "so does almost everything else, and that includes indoors as well as outdoors." Indeed, it's long been accepted that pollution is normally worse inside most homes than directly outside. As most of us spend about 85 percent to 90 percent of our time indoors, indoor air is actually more important than outdoor air. Moreover, when air becomes stagnant, concentrations in indoor air become more important because wind-aided ventilation is less efficient. That allows indoor pollutants—cooking by-products, cleaning agents, mold spores, pet dander, tobacco smoke, hair spray, insect droppings, etc.—to increase.

"What I think is the most coherent explanation for all the epidemiological evidence associating outdoor particulate levels to illness," says Consad's Rueter, "is that on the days particulates are high, people indoors are being exposed to allergens producing effects ranging from mortality from asthma and other things to simple reductions in lung function, leading to increased complaints and hospitalizations."

Moolgavkar and his associates wrote that while some have "argued that the association of particulates with mortality is

AP PHOTO / J. SCOTT APPLEWHITE

EPA chief Carol Browner: When questioned at a congressional hearing, she admitted she had not read any of the studies she claims prove that "science calls for action" on particulates.

remarkably consistent from city to city, in the presence or absence of other pollutants, and under varying conditions of weather," they have "been unable to identify a single study in which other pollution variables have been adequately controlled." That was in 1995. Does he still feel the same way? Yes, he says. "When you look at the studies, you generally see that only one pollutant is observed at a time. They don't look at the complex mixture; they just focus on particulates. Often times they have the data available, but they just don't use it."

Show Me the Numbers

Given both the controversy and the stakes, Schwartz and Dockery's data should be made public, rather than simply disseminated to persons they select. Yet for years they refused to do this—even to the EPA, though the federal government paid for their research. In early 1994, CASAC wrote to Browner asking that she get "crucial data sets linking exposure to particulate matter and health responses." Several groups filed Freedom of Information Act requests with the EPA to get the Six Cities data. The EPA responded that it didn't have the information.

Finally, the Harvard researchers announced they were going to give the pollution data to the Health Effects Institute (HEI), while withholding the health data. Later, under continuing pressure, Schwartz and Dockery said they would turn over the health data as well, albeit under certain stringent conditions. HEI President Dan Greenbaum says it will take two to three years to complete an evaluation.

But the EPA has hardly been persistent about trying to get the data. One agency official wrote to Commerce Committee Chairman Thomas Bliley (R-Va.) saying there was no need "for EPA

to obtain the underlying data" since the studies were published in peer-reviewed journals. Browner later told Congress the same thing. But that's not what peer review is about. You can't review what you can't see; all you can do is ensure that what is in front of you is correct. If an author is selectively presenting data that fit his hypothesis, there's little a medical journal or peer reviewer can do.

HEI's Greenbaum sympathizes with Schwartz and Dockery's recalcitrance. "It's a complex database," he says, "and you need procedures to make sure only qualified investigators can look at this stuff. Some people tend to be analysts for hire." And indeed, Schwartz has told *The Wall Street Journal* that he doesn't want to provide the information to "industry thugs," by which he means scientists who receive industry money.

But those who have been able to review his data have raised questions. "Going back through Schwartz's results, we found he didn't report everything, only positive results" linking pollution to health problems, says Roth, adding that "[h]e always uses a different analysis in different cities." For example? "Well, one factor is how many days of weather you're going to count before the day of death or hospital admission—the previous five days, the previous six days, or whatever. What he does is when he goes to different cities, he uses a different lag." Roth adds, "Had he been consistent, he would have found insignificant results in some of his cities."

Moolgavkar says he also sees such problems in Schwartz's work. But it's not just Schwartz who does this, he says. "If you look at various PM studies, some will use a lag of two days, some one day or some even three or four days. To me that's not consistency. To me, it means you have to go through contortions to get a specific result."

Death and Witchcraft

Such contortions are not a challenge for the EPA. The agency has ostensibly compiled all of the relevant data on PM into what is called the Criteria Document. If you want a copy, bring a forklift: It runs to some 2,400 pages. But this poundage masks a vital little fact: Only a handful of Browner's 86 studies contain direct measurements of fine particles. The rest estimate fine particles as a percentage of the total or don't discuss fine particles at all. Harvard's Dockery kindly sent REASON a list of other studies with direct PM2.5 measurements. With the addition of a subsequent study, the total stands at a baker's dozen.

Of the four studies looking for premature deaths, two shared the same database, and only one unequivocally found a significant association between such particles and premature death among nonsmokers and persons without occupation exposure: A 1995 study with Pope as lead author that relied on American Cancer Society health data and is known as ACS II. Among the most important of the PM studies, it appeared in *The American Journal of Respiratory and Critical Care Medicine*, published by the American Thoracic Society, a unit of the ALA.

Though it failed to adjust for weather (not even temperature), the biggest problem with ACS II is that the PM2.5 data were collected from 1979 to 1981, but the death data covered the years 1983 through 1989. "Did the PM2.5 level change after this?" asks Utah's Lyon. "Did they clean up the air? Arden [Pope] doesn't know, and nobody else knows."

The study assumes that either the PM2.5 level remained the same in all the cities, or that if it changed, it changed equally in all the cities. Neither assumption could possibly have been true. Indeed, Brookhaven's Lipfert himself noted in a 1995 paper that during this period the dirtiest cities could have been expected to be cleaning up their air at a much quicker pace than cities already in compliance with federal law.

"We've just arbitrarily decided PM2.5 is the villain," says epidemiologist Joseph Lyon. "This comes as close to witchcraft as anything I've seen. This isn't science. This is a firmly held warm and fuzzy belief: 'I know these things because I feel them.'"

Of the four premature death PM2.5 studies, only one besides ACS II showed increased deaths among nonsmokers. It found statistically significant associations between particle increases and increases in death in three cities, and no associations in the three others it looked at. One of the negative cities, Steubenville, also had the largest increase in fine particles. But because the data set from one of the significant cities (Boston) was so large, this made the association in all the cities combined statistically significant.

How about symptom studies? According to last year's "Gambling with Health II," an ALA report complaining that the EPA was too soft on particulates, "A number of studies have linked fine particle pollution (PM2.5) with increased prevalence of coughs and bronchitis, with especially severe effects on children with asthma." Really? Of the nine PM2.5 symptoms studies, four showed *no* association between fine particles and hospitalizations or *any* symptoms measured. Five showed an association between fine particles and *some* of the symptoms measured.

"We've just arbitrarily decided PM2.5 is the villain," says Lyon. "This comes as close to witchcraft as anything I've seen. This isn't science. This is a firmly held warm and fuzzy belief: 'I know these things because I feel them.'"

Lipfert and EPRI's Wyzga reviewed 30 published studies in the December 1995 *Journal of the Air & Waste Management Association*, all they could find by that date, examining associations between deaths and particle pollution. Some used PM10 as the measure, others PM2.5. They then compared the two sets of studies. Their conclusion was that, if anything, *PM10* was associated with a slightly higher risk, though there couldn't be a determination of statistical significance since not enough stud-

Asthma: Gasping at Straws

A panicked father rushes into the hospital with his gasping, asthmatic child in his arms. "Help!" cries the boy's mother. "He can't breathe!" The ad, sponsored by the Clean Air Trust in affiliation with the American Lung Association, Public Citizen, Defenders of Wildlife, and the Sierra Club, was part of a lobbying effort to support the EPA proposals. So it's not hard to guess what the culprit is.

Taking their cue from President Clinton and his wife, who couch practically all their initiatives in terms of saving endangered children, proponents of the proposed EPA standards have done likewise. "When it comes to protecting our kids, I will not be swayed," EPA's Browner dramatically intoned at a recent conference on children's health.

The child card is repeatedly played: "Hundreds of scientific studies have shown that today's air pollution levels are shortening lives and harming children," claimed the Natural Resources Defense Council in a newspaper commentary. The ALA has young people with asthma testify at press conferences in support of the EPA's proposed standards. The Sierra Club is running radio ads that use little children's voices to push the EPA proposals, saying how stricter regulation will keep them from becoming sick.

Asthma is predominantly a childhood disease. Rates are indeed rising sharply among children. Many environmentalists say this rise is from air pollution and only the white hats at the EPA can stop it. Informing us that "More than 5,000 people die every year from asthma, three times the rate of just 10 years ago," Richard Wiles of the Environmental Working Group adds that "the Clinton administration proposed new health standards for ozone and particulates."

And who are the black hats? Syndicated *New York Times* columnist Bob Herbert asked readers to choose between "the kids with asthma who have a tough time breathing whenever there is a bad air day or the powerful representatives of the oil industry, the Association of International Automobile Manufacturers, the American Bus Association, the Chemical Manufacturers Association, etc."

You can just picture some fat cigar-chomping businessman sitting on the chest of a poor little child gasping for air. The problem with that picture, though, is that as asthma incidence and deaths have been sharply rising, all the measured types of pollution—including particles and ozone—have been sharply dropping.

Further, studies have failed to show a relationship between even high air pollution levels and asthma. A recent comparison between asthma rates in highly polluted Leipzig in what was then East Germany and the far cleaner Munich in West Germany found asthma rates lower in the East. Noting this and similar findings between squeaky-clean Sweden and polluted Poland, two researchers wrote in the January 3, 1997 issue of *Science* that these "suggest that asthma prevalence has increased because of something lacking in the urban environment, rather than through the positive actions of some toxic factor."

Shortly before that, the U.S. Centers for Disease Control and Prevention released an analysis of asthma deaths citing a previous study indicating "no evidence exists that supports the role of outdoor pollution levels as the primary factor driving" the asthma increase. Even Harvard's Douglas Dockery, whose epidemiological work the EPA has so heavily relied upon in promulgating its new standards, admitted (in a co-authored 1996 medical journal article), "There appears to be no evidence that the prevalence of asthma or asthmatic symptoms in children is associated with chronic exposure to particulate, sulfur oxide, or ozone air pollution."

Something else you often don't hear in the popular press and never hear at all from environmentalists is that the increase in asthma is entirely race-related. For white children and young adults, there has been essentially no increase. It's all among blacks, to a point where blacks between the ages of 15 and 24 now have six times the asthma death rate of whites the same age. Although there is evidence that blacks are more likely to live downwind of factories than whites, utility plant and car exhaust are spread evenly. Is air pollution bigoted? Or is the increase in asthma related to lifestyle or housing?

In May of 1997, researchers reported that the major cause of asthma in mainly black inner-city neighborhoods is neither cars nor corporations nor chemical companies, but cockroaches—that insect we all love to hate. Overall, it appears that a quarter of all asthma in these areas (which have twice the asthma rate of non-inner-city areas) is from the horrid little things.

"It's a cruel hoax to lead parents to believe their children will be protected from having asthma if only the EPA clamps down on outdoor air pollution," says biomedical scientist Robert Phalen. And don't hold your breath (as it were) waiting for a government or activist group campaign against cockroaches when groups like the Chemical Manufacturers' Association make nicer, and clearly larger, targets.

—M.F.

ies were involved.

The EPA's own Criteria Document summarizes the results of the Harvard Six Cities Study, including a table comparing the relative risks for increased death in adults. For PM10 or PM15, it is a mean increase of 42 percent. For PM2.5, it is 31 percent. A mean increase is a comparison between zero pollution and the actual amount, as opposed to, say, comparing one polluted city with another. In other words, if you got rid of all the pollution, health would not change much.

"In a subsequent analysis," says Lipfert, "*we have found that*

PM10 exhibits a higher mean effect [than PM2.5] for hospitalization and lung function as well." Similarly, a recent study of Phoenix found an association between deaths and PM10, but not PM2.5. The chief author is a scientist with the EPA. Although the study has been widely circulated in samizdat, the EPA has refused to release it as of this writing.

If you want a real sense of witchcraft at work, consider the EPA's public misrepresentation of these studies. In her February 12 testimony before the Senate Environment and Public Works Committee, Carol Browner exhibited a poster titled "Soot/Particulate Matter: The Science Calls for Action." It listed details of five PM2.5 studies, along with the approximate number of persons involved, the alleged adverse health effect, and average annual particulate matter concentration.

Of these studies, only one flatly supports the EPA's "adverse health effect": ACS II. But ACS II looked only at fine particles, so it couldn't tell if other pollutants or larger particles might have been responsible. Another is the study in which three of the cities showed associations and three did not. Browner's chart mentioned the three with positive associations; the other cities were left off the chart. Of the remaining three studies on the poster, none showed a statistically significant association with the claimed "adverse health effect."

Thus, the chart Browner displayed not only failed to show the range of the PM2.5 literature, making use of only five of 13 studies, but of those studies it did mention it misrepresented the conclusions four out of five times. When questioned at a later hearing, Browner said that she had not read any of these studies.

The Grill Cops Meet the Air Taxers

Browner's innocence of the science, however, has not prevented her from forming opinions about the effects of her proposals on your life. She and her activist allies brush aside arguments that the proposed standards could have a negative impact. The proposed standards are "not about outdoor barbecues and lawn mowers," she told Congress during her February appearance, repeating the statement in her May testimony. Smearing industry claims that these would be affected as "junk science," she said elsewhere, "These are scare tactics. They are fake. They are wrong. They are manipulative." The Environmental Working Group's Richard Wiles says, "No one is proposing to regulate barbecue grills." Talk about barbecues and lawn mowers is "crazed propaganda," says Frank O'Donnell, executive director of the Clean Air Trust.

Yet back in 1994, the EPA had already announced plans to regulate lawn mowers. "The small gasoline engines that Americans use in yard and garden work are a significant source of air pollution," Browner said at the time. Last year, the EPA did promulgate emissions standards for lawn mowers, though they were fairly mild as a result of "the antiregulatory climate in Washington and GOP efforts," as *The Christian Science Monitor* put it. Also under Browner, the EPA has begun the process of regulating power boats. The administrator forgets such things, just as she forgot to read the particulate studies.

California already regulates barbecue grills, along with leaf blowers and paint. Denver severely restricts when wood-burning fireplaces may be used and has outlawed the installation of such fireplaces in new homes. Burn a log, go to jail. (Or at least pay a fine.) Regulators in San Francisco have even urged residents to refrain from using aerosol deodorants and alcohol-based perfumes in order to reduce ozone-creating gases.

When confronted with some of this, Browner insisted to Congress that blaming the EPA would be wrong, because these decisions are made by local authorities. This infuriated several congressmen. In any case, Browner stated in practically the same breath, "I do not believe lifestyle issues will be involved." But even the administration's own assistant secretary of transportation, Frank Kruesi, expressed concern in a memo that the new pollution standards may "require lifestyle changes by a significant part of the population."

Talk about barbecues and lawn mowers is "crazed propaganda," says Frank O'Donnell, executive director of Clean Air Trust. Yet back in 1994, the EPA had already announced plans to regulate lawn mowers. The EPA has also begun the process of regulating power boats.

Jerry Martin, a spokesman for the California Air Resources Board, stated the obvious when he told the *Los Angeles Times*, "As we have gotten the biggies under control, the smaller sources of pollution become more important." This will mean more mom-and-pop places like bakeries and dry cleaners, and it will mean households: barbecues, recreation, gardening, and lawn maintenance. It will hit our personal lives because there's no place else to go.

Actually, there is one more place: your wallet. While the Clean Air Act forbids the EPA to take economic costs into account in *setting* health standards, an executive order by President Clinton requires it to make a cost-benefit analysis anyway. Cost-benefit analysis—seeing what we save with a given regulation versus what it will cost to implement it—is a tool developed by antiregulatory forces. The idea is that while it's often easy to see the benefits of any given new rule, there is usually a financial downside that should be taken into account.

Though this notion originally caught regulators and their allies off guard, they soon developed a shield against it: All that was necessary was to find that the regulations could *always* more than pay for themselves. So it goes with the EPA's cost-benefit analysis of the proposed PM standard. The agency estimates the annual costs of partial attainment at $6.3 billion, with benefits of $58 billion to $119 billion (based on saving 20,000 lives, a

figure now revised to 15,000). It values each life saved at $4.8 million, to which you can add the costs of illnesses and damage to trees and structures prevented. Thus, the cleaner we make the air, the more we boost the economy. Could anybody argue with that?

They sure could. We've seen this kind of EPA clean-air hocus-pocus before. In 1990, researchers Michael Hazilla and Raymond Kopp of the think tank Resources for the Future determined that environmental policies had reduced the GNP almost 6 percent by that year. They calculated that this translated into over a million lost jobs. An honest response would be that there are nonfinancial benefits from environmental regulations, that a better environment is something you have to buy, like a better house or car.

But the EPA didn't go that route. Putting its calculators into overdrive, it discovered that the total benefits from clean air rules, regarded as the most onerous of the regulations, had actually reaped the nation a $1.3 trillion windfall by 1990—almost a quarter of the entire GNP! In comparison, the miracle of the loaves and fishes was practically a circus trick.

Still, there's nothing inherently wrong with the assertion that environmental regulations can actually save money. Let's look at the claims. On the benefits side, the EPA assigns $4.8 million for each premature death avoided. Yet the Department of Transportation uses a considerably lower figure, $2.7 million. Further, DOT is concerned with accidental deaths; for its calculation, it assumes a person in good health dying suddenly at age 40. (Such calculations are usually based on the value individuals implicitly place on their own lives when they trade safety for higher pay or lower costs.)

In stark contrast, the premature deaths suggested by the particulate studies are among "vulnerable individuals, primarily the elderly and individuals with preexisting respiratory disease," as the EPA staff paper on particulates puts it. Thus, it continues, "some of the mortality associated with short-term pollution is occurring in the weakest individuals who might have died within days even without PM exposure." Rather morbidly, it calls this the "harvesting effect." Numerous researchers say they believe that the epidemiological studies probably do show a harvesting effect.

Even Schwartz has admitted that "[t]he people being affected [by fine particles] are those with either chronic or acute lung disease, and possibly those with chronic heart disease." Browner herself told a congressional committee in May that the average shortening of life was from one to two years. It makes no sense to value a slight extension of an elderly, suffering person's life at millions of dollars. (It also reveals the fallacy of comparing deaths from particulates to deaths from vehicle accidents or AIDS, as activists and newspapers have done.)

As for the cost side of the PM2.5 proposal, the EPA says we're talking about $6.3 billion a year, in addition to what is already being spent for PM10 reduction. Not exactly chump change, but hardly the most onerous regulation in this country. Remember, though, this is for "partial attainment." The way regulations work is that each new bit of cleanliness costs more than the bit before. Reducing the first ton of emissions may cost just $50 per day, but the 10th ton is $200 and the 20th ton is $500. Full attainment doesn't cost twice as much as half attainment; it could ultimately cost hundreds of times more.

The EPA estimates that full attainment would require removing an additional 13 micrograms of PM2.5 per cubic meter of air nationally, at an annual cost of far more than $1 billion per microgram removed. It doesn't say how much more, but one EPA-commissioned study using data from Philadelphia pegged it at over $4 billion just for that city, and this still didn't allow full attainment. Using the Philadelphia numbers, reports from both the Center for the Study of American Business and George Mason's Center for the Study of Public Choice estimated that the new PM2.5 regulations would cost the nation $55 billion or more each year. In May, the Reason Public Policy Institute put it between $70 billion and $150 billion a year. (RPPI's parent organization, the Reason Foundation, is also the parent of REASON.)

For ozone reduction, the agency oddly provides two estimates, neither for the proposed standard. One is for a stricter standard, the other for a looser one. The tougher one shows partial attainment costs of $2.5 billion per year, with benefits of $100 million to $1.5 billion. The looser one has costs of $600 million a year and benefits ranging from zero to $500 million. Thus with ozone, the EPA doesn't even pretend that the regulations will pay for themselves.

But other calculations show that the EPA is still grossly understating the problem. Again, on the benefit side the agency makes assumptions that strain credulity. Among them is that preventing a single case of nonfatal bronchitis is worth a stunning $587,500. The Treasury Department's Office of Economic Policy, in a December memo to the EPA, expressed disbelief at this figure. On the cost side, the EPA again keeps expenses down in its model by assuming that regions in nonattainment will eventually just give up. But what if such areas—wanting to avoid federal punishment and micromanagement—keep spending to comply?

Alicia Munnell, a member of the president's Council of Economic Advisers, made this point in a mid-December memo to the EPA, a memo that finally became public in March. Munnell said the EPA's use of partial cost analyses "understates the true costs of stricter standards by orders of magnitude." According to Munnell, "CEA estimates indicate that the cost of full attainment could be up to $60 billion," which would show negative net benefits of almost $60 billion a year, since the ozone standard would provide virtually no savings.

Using data from three cities, the CEA also challenged the EPA's assertion that additional ozone-causing pollutants can be removed at a cost of $3,000 to $10,000 a ton; it said the actual cost would probably be $30,000 to $80,000 a ton. Other analyses have also shown that the price of meeting the new ozone standard would be exorbitant: RPPI estimates full attainment at between $20 billion and $60 billion a year, while George Mason's Center for the Study of Public Choice places it somewhere between $54 billion and $328 billion.

First Do No Harm

Fundamental to the position of the EPA and others advocating

PM2.5 regulation is that, while PM2.5 per se may or may not be a direct cause of health problems, the association appears to be strong enough that directly controlling PM2.5 is still warranted. That way you'll reduce what's causing harm, even if you don't know exactly what that something is.

Browner is apparently ignorant of this. During hearings in May, Rep. Tom Sawyer (D-Ohio) asked her if there were chemical differences among PM2.5 particles. "I'm not sure I understand the question of chemical differences," she replied. An EPA associate at the witness table had to answer for her: "All PM2.5 is not the same." But Browner continued to step on her tongue. "Are you telling me there's no difference regardless of what kind of stuff it is?" Sawyer asked. "Right," said Browner. "It is the fine particle that causes the problem....It is the size."

Au contraire, says the EPA's own staff paper, along with the very scientists whose work Browner cites as supporting her. Pope himself says, "I'm not pretending I know precisely what it is in these particles that causes the damage." Thus, aside from the confused Browner, what the advocates of PM2.5 regulation are saying is: Control the PM2.5 and you'll control the real culprit. Ignoring for the moment that so many of the PM2.5 studies don't show an association with illness, much less a causal relationship, it is not a wholly illogical proposition. People have made decisions based on such associations throughout history. The Romans, for example, blamed malaria on "bad air" coming up from swamps. By avoiding low-lying areas in the summer, they avoided the real culprit: the mosquitoes. On the other hand, during the Plague of London in 1666, the citizenry blamed the spread of disease on animals. Good thinking. Then they killed all their cats. Bad thinking. The disease was spread by the lice of rats, which the now-dead cats could no longer kill.

There are three possible outcomes if you're using PM2.5 as a surrogate for an unknown something else. The first is that it's a proper surrogate. Reduce the PM2.5 and you reduce the harmful stuff, too. The second is that you have no effect on the bad stuff. The third is that you could be making things worse.

There are several reasons why the new standards could have sinister side effects. One is that, when it comes to environmental policy, it is the rule that often blazes the path for the science. If there's anything in air pollution that's causing harm and it's not PM2.5, the new regulations could delay discovering what it is for years.

We've seen this happen with PM10. The EPA's regulation led to scores of PM10 studies but only a handful that looked at PM2.5. "We'll have pre-ordained what we have data on," Lipfert says. "The EPA will have mandated monitoring of PM2.5, and that means you'll be able to evaluate the PM2.5 hypothesis but not any other."

Another reason is that by enforcing PM2.5 rules, we could actually be pushing polluters toward creating particles that are *more* dangerous. According to Robert Phalen, director of the Air Pollution Health Effects Laboratory at the University of California at Irvine, "If it's the ultrafine particles which are highly toxic,"—he means those smaller than PM1.0—"the [PM2.5] regulation could lead to more deaths than lives saved." Diesel engines, he notes, emit particles in the PM2.5 range. In the late 1980s, at the urging of the EPA, new ones were designed that put out smaller particles. "They put out less mass, but they put out

All in the Family

While it's well understood that the EPA went beyond what it was required to do by the American Lung Association's successful suit, suggesting that this was a "sweetheart suit," it's less well known that the EPA regularly funnels money to the ALA and other groups that sue it. Journalist John Merline, writing in *Investor's Business Daily*, and basing his figures on the Federal Assistance Awards Data System, noted that from 1990 to 1995, the EPA gave the ALA more than $5 million. Yet between 1993 and 1996, the group filed five suits against the EPA. According to Merline, the EPA gave the Natural Resources Defense Council over half a million dollars in 1995, even as the NRDC filed no fewer than 34 suits against the agency from 1993 to 1996. Indeed, the EPA even forked over $150,000 to the NRDC to help defray the cost of the group's legal fees for suing the agency.

"If you think the EPA is upset" about these suits, a professor of environmental management at the University of Maryland told Merline, "think again. Truth be known, the EPA wants to be sued, because every time they are sued it expands the reach of the Clean Air Act." And EPA's domain in general. Both the ALA and the NRDC fired off letters to the paper, claiming that the vast majority of their EPA funding was not for suing the agency. But even if the checks weren't marked, "To sue our pants off," a dollar is a dollar. Sending a few million bucks to either group for any purpose allows them to increase funds for other purposes, including lawsuits.

Groups like the NRDC and the Environmental Working Group have been extremist since their conception. But the ALA too appears to have gone the way of many civil rights and women's rights groups. Once they accomplished their original aims, they set newer, ever more radical goals to justify their budgets. And in the last three years, the ALA has taken at least $150,000 from a group called the Association for Responsible Thermal Treatment, which it uses to wage a campaign against cement kilns used to burn hazardous waste. This generous donor is made up of commercial hazardous waste incineration companies: the competitors of the cement kilns. The air about the ALA is dirty indeed.

In addition to handing out taxpayer money to groups that sue it, the EPA greases the palms of groups who lobby for the agency's agenda. For example, the Ozone Transport Assess-

30 to 60 times more particles by number. If the studies indicating that ultrafine particles are the real hazard are correct, changes such as these would make the air more hazardous," says Phalen.

The proposed standards could even kill some of us. Economists have piled up evidence showing that those with more money live longer. "Wealth equals health," goes the saying. Harvard University economist W. Kip Viscusi has calculated that "every $50 million spent on regulation induces one statistical death to the income-mortality connection." In its suppressed memo, the president's Council of Economic Advisers estimated that the cost of full attainment on ozone could be up to $60 billion a year. If so, by Viscusi's calculation it will cost 1,200 lives. A Reason Public Policy Institute report by Kenneth Green, RPPI's director of environmental studies, and University of Southern California systems management professor Ralph Keeney calculated a higher toll: 2,201 Americans for each additional $10 billion spent.

Industry "can talk all they want about costs," one Sierra Club official told the *Utility Environment Report*."We're going to crush them." Them, their employees, and their customers.

Time Out

Here, in a nutshell, is what science appears to show about particulates:

• Particulates are often associated with increased death and hospitalizations, but often they are not. The same goes for numerous other pollutants.

• To the extent that there is an association with deaths and hospitalizations, it is a consistently weak one—so weak that epidemiologists would generally treat it as having no meaning.

• To the extent that there is an association, few conclusions can be drawn. Ambient particle levels may be a surrogate for adverse weather or other health threats, such as indoor allergens. The cause may be a specific chemical or something else that, in the stampede to regulate PM2.5, will be overlooked.

• Even if one were to conclude that particulates were causing premature death and hospitalizations, it is far from clear that PM2.5 is more closely associated with sickness and mortality than PM10, which is already stringently regulated.

Here, in a smaller nutshell, is what the science appears to show about ozone:

• Although in rare circumstances it may trigger potentially fatal asthma attacks, at the levels found in the United States it is highly unlikely to be killing anyone.

• It does cause a decrease in lung function, to the extent that susceptible individuals in extreme conditions may suffer enough discomfort to go to the hospital.

• Even if there were no man-made ozone at all, naturally present ozone would probably still cause these problems in a certain portion of the population.

There are far fewer particulates of all sizes in the air than there were 10 years ago, far fewer still than 10 years before that, and perhaps one-fiftieth the level London had when it suffered its great 1950s killer "fogs." Without a single new rule, a single new sentence uttered by Carol Browner, or a single new alarming news story, less PM10 and hence less of the PM2.5 subset will be emitted or breathed. All of this is also true for the gases that

ment Group, which is private but has federal sponsorship, last August announced in a memorandum that the EPA would give members $100,000 to "to support our activities," including "public service" announcements.

But probably the most effective lobbying has come from the ALA and the NRDC, in the form of studies they have presented which, they say, call for much tighter standards than even the EPA has proposed. The ALA's "Gambling with Public Health II," for example, pushes a PM standard of 18 micrograms per cubic meter rather than the EPA's 50. It says that under its own standard, over 178 million persons would live in nonattainment counties, compared to 85 million under the EPA's proposed standard. The report makes almost no effort to argue that these people really are in any danger.

The NRDC, probably the nation's most effective (some would say "rabid") environmental group, says pollution-related health problems are much worse than the EPA thinks. "Approximately 64,000 people may die prematurely from heart and lung disease each year due to particulate air pollution," and all but about 8,000 of these deaths could be prevented by adopting even tighter standards than the EPA has proposed, the NRDC claims.

It's doubtful that either the NRDC or the ALA thinks it can get the EPA to go with the standard it proposes. But is that their aim? "There's terrific pressure on [EPA] regulators because these groups say there will be almost 70,000 extra deaths a year if the EPA does nothing," says U.C.-Irvine's Robert Phalen. "These activists are saying, 'How many bodies do you have to have on the street before you act?' It's very difficult for an agency to make objective judgments under such pressure."

On the other hand, there's every reason to think the EPA's leadership has no desire to withstand the pressure. Reports like the ALA's and the NRDC's certainly bolster the EPA's claim that "[s]ome will contend that we are acting precipitously and others will claim that we are not being protective enough." Thus, the agency can claim to be taking the moderate position. The standards proposed by the ALA and the NRDC also prepare the way for some date in the next century when the EPA can call once again for ratcheting down the amount of pollution allowed.

—M.F.

form ozone. The best that can be hoped for from the new proposed standards is that trends already in place might be accelerated.

Given all this, the case for burdening Americans with tens, maybe hundreds, of billions in costs each year for new regulations seems absurd. Indeed, the very lack of new regulation gives scientists more leeway in choosing what pollutants to research. The fiscal 1998 EPA budget allocates $26.4 million specifically for particulate studies. "Let's take a big time out," says CASAC's McClellan. "[W]e really run a risk of prematurely identifying a new target absent of understanding what that target should be."

A reasonable solution is to go ahead and step up the PM2.5 monitoring system, including more measurements of the chemical composition of the PM2.5 particles, not just the size. Since enforcement of the EPA's proposed standards wouldn't begin until 2002 anyway, this wouldn't necessarily put us much behind schedule.

What Is to Be Done?

In February, Carol Browner told a Senate panel, "This has been the most extensive scientific process ever conducted by EPA for public health standards." Browner is actually quite ignorant of the science, but as we have seen, the scientific process played almost no part in the EPA's decision. Its actions are a far better illustration of public choice theory: Regulators regulate, and enforcing old regulations isn't nearly as fulfilling as proposing new ones. The EPA's actions are thus quite predictable. Indeed, this case may be the single best example of a powerful federal agency imposing a crushing regulatory burden sheerly for the sake of regulating.

For the first time the EPA is promulgating standards that its own cost-benefit analyses seem to concede cannot be met. The arrogance that Browner and the EPA have shown on this issue reflects an agency accustomed to almost completely free rein. Until recently, what the EPA promulgated became law. No fuss, no muss, no messy papers for presidents to sign. That has changed. The Congressional Review Act of 1996 gives Congress the power to "veto" agency regulations. It will have 60 days after the EPA's final promulgation to do so.

Two other provisions allow for court remedies. One is the Unfunded Mandates Reform Act, passed in 1995, which states that any regulation not dealing with national security and costing the private sector more than $100 million in any year must have congressional approval. The other is the 1996 Small Business Regulatory Enforcement Fairness Act, which requires the EPA to convene a small business advocacy review panel. The agency arrogantly refused to follow the law's procedures, claiming that the proposed standards will not have "a significant economic impact on a substantial number of small entities" and, in any case, it won't be the EPA making the regulations, just the EPA forcing others to make them.

Among the groups that seem to think that position is absurd, and who are opposing current implementation of the standards, are the National Federation of Independent Businesses, National Small Business United, the National Black Chamber of Commerce, the National Indian Business Association, and the National Association of Neighborhoods. It may be the fate of the EPA standards to be tied up in the courts until the next century.

Whether Congress will invoke its "veto" cannot be predicted, but two letters sent to President Clinton offer hope. The first, from Rep. John Dingell (D.-Mich.) and 41 other Democrats, doesn't oppose the proposed standards per se but expresses concern that they "will create such controversial and impractical targets that they will undermine support for the [Clean Air] Act, even amongst its friends." The letter calls for a meeting with the president and Vice President Al Gore. The second letter goes further. Written by Rep. Rick Boucher (R-Va.) and signed by 35 Democrats and 78 Republicans, it declares, "the significant uncertainty surrounding the health benefits, costs and effects of the proposed ozone and fine particulate standards requires that the imposition of the regulations be deferred."

At stake in this encounter involving the EPA, its activist allies, and its scientific and political critics is the issue of what constitutes "pollution." The effort by dogmatists to convince us that any man-made emissions anywhere, whether or not they harm anyone or anything, must be dealt with at any price has failed. The percentage of Americans willing to pay for more environmental regulation fell from 71 percent in 1990 to 40 percent in 1994.

Most Americans are now convinced that nonharmful emissions are not pollution. The only strategy to counter this is to make us believe that *all* emissions cause harm, not just to trees or animals but to human—especially kids'—health. Thus, anything that man puts out is a pollutant. Rules that would effectively bring pollution levels down to the natural background rate in some geographic areas—as would both the EPA's proposed particulate and ozone standards—would be a final affirmation of this approach.

The effort by dogmatists to convince us that any man-made emissions anywhere, whether or not they harm anyone or anything, must be dealt with at any price has failed.

One scientist compared the EPA's use of science to witchcraft. Given that witchcraft's practitioners worshipped nature, his metaphor fits.

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BY AMY L. SHERMAN

THY NEIGHBOR'S KEEPER

Can private charities replace tax-funded welfare? A program in one Maryland county suggests the challenges facing church-based efforts to help welfare mothers become self-sufficient.

Ed Kirk says he's the "kind of person that doesn't believe in failure." A retired Bell Atlantic executive, Kirk lives in a Maryland suburb and has worshiped at Our Lady of the Fields Catholic Church for 20 years. Two years ago, he and his wife, Elaine, helped Jane, a 32-year-old single mom, get off welfare. (The names of former and current welfare recipients have been changed to protect their privacy.)

Every day for four months, Kirk rose before 7 a.m., picked up Jane and her toddler, dropped the boy off at the babysitter, and drove Jane to work. She did a lot of temping, and sometimes jobs were 30 or 40 miles away. During the long drives, he'd cheer and cajole.

"I was always talking to her positively, telling her she could get off welfare," Kirk says. He wouldn't let her dwell on the negative, tolerated no excuses for not working to resolve her problems, and encouraged her to focus on the future. After a 14-month roller coaster ride of hirings and firings, health problems, suspicious drug activity, eviction, and family reconciliation, Jane has finally settled into a full-time clerical job with medical benefits in Washington, D.C., and has her own apartment. Kirk says it's a success story but admits "it had a lot of bruises along the way."

Kirk's church is one of two dozen congregations in Maryland's Anne Arundel County that participate in the Community-Directed Assistance Program, or C-DAP. Launched in June 1994, the program links welfare recipients with small support teams of church volunteers. The church receives one year's worth of the recipient's AFDC benefits in a lump sum, and the volunteers and recipient work together for six months to tackle the obstacles to economic self-sufficiency and find stable, permanent employment. Since its inception, 21 welfare recipients have enrolled in C-DAP and 14 have not returned to the state's welfare rolls. Though small-scale, C-DAP is the most creative and thoughtfully constructed partnership between the religious community and local government I've seen while researching such initiatives in several states on the cutting edge of welfare reform. And soon more welfare recipients may be able to join something like C-DAP: Officials from Maryland's Frederick County and Washington County have invited C-DAP manager Remy Agee to teach them how to replicate the program.

Agee, an employee of Anne Arundel County's Department of Social Services, is quick to say that "C-DAP isn't for everyone." Because of its emphasis on work, pregnant welfare recipients or those with small children won't join. Recipients with drug problems are screened out, and recipients who want further schooling typically reject the offer to enroll in C-DAP. Furthermore, it appears that only churches are willing to make the long-term volunteer investment required of C-DAP mentors. Agee originally thought that service organizations, such as the Kiwanis or Rotary clubs, might be willing to help, but they turned her down. "They weren't willing to work as labor-intensively with a family for six months or more," she says.

While C-DAP is succeeding in helping recipients achieve independence from the dole, my study of 13 program participants shows the enormous difficulties of obtaining true self-sufficiency. "We and the public are learning," Agee reports, "that there are multiple issues for almost every family that is eligible for assistance. Most of the [C-DAP] participants have spiraled downward pretty far. They've exhausted their own resources and those of their families and friends." The relatively small number of C-DAP's success stories could lead one to question the initiative's value. Critics of welfare reform might argue that C-DAP's record proves that the challenge of moving needy families from dependence to self-sufficiency is just too great for private citizens; that only government with its large resources can handle it. In reality, though, the contrary is true. C-DAP provides a vivid and sobering reminder of why welfare reform was necessary. While the Maryland experiment counsels against an easy optimism about fixing the "underclass problem," it also demonstrates an innovative welfare-to-work approach that other states should consider imitating.

With the devolution of welfare from Washington to the states, and from the states to civil society, governmental entities are stepping up their efforts to collaborate with

private social service organizations, particularly churches and religious nonprofit groups. Mississippi Gov. Kirk Fordice's Faith and Families program aims to match every welfare family with a congregation that can help it achieve economic self-sufficiency. Gov. George Allen of Virginia has sponsored several regional conferences bringing together state bureaucrats, community nonprofits, and religious leaders to forge new alliances and facilitate welfare-to-work mentoring programs and new child care and job training initiatives. Govs. John Engler of Michigan and Parris Glendening of Maryland are taking similar steps.

Public partnerships with religious social service agencies aren't exactly novel. Stephen Monsma's recent study, *When Sacred and Secular Mix*, discusses hundreds of examples of cooperation between government and religious groups. Organizations like Catholic Charities and the Salvation Army make a huge impact serving the poor and receive considerable public funding. But the climate is new in two respects. First, the "charitable choice" provisions in the federal welfare reform law give religious social service groups that accept government funds explicit protections that enable them to carry out their work without compromising their unique religious identity and mission. Such protections make it more likely that evangelical Christian groups already fighting poverty will be able to expand their activities by accepting state money. Second, most previous collaboration was with religious nonprofits, not individual congregations. Aggressive attempts to stir churches to greater activity may provide a twofold blessing. They can harness previously untapped human and financial resources, and they can encourage a reformation of church benevolence: away from traditional, "commodity-based" outreach that gave poor people band-aids of money, food, and clothing, and toward "relationally based" service that addresses the root causes of persistent poverty and encourages permanent change.

The C-DAP model is a good one for churches and policy makers to consider for several reasons. First, it illustrates the ground-floor-up involvement critical to fruitful public-private collaboration. Agee, the C-DAP manager, held focus groups with business owners, community representatives, churches, and welfare recipients to shape a program that would address both the structural and the moral-cultural factors contributing to welfare dependence while drawing on the enormous human resources available in the religious community. Welfare recipients like Wanda, a 24-year-old mother of two, said they wanted more personalized assistance; they were "sick of being treated as faceless numbers by the [social services] bureaucracy." Businesses said they'd hire poor people if they had good attitudes and a personal support system to help them cope with the challenges of day care, transportation, and budgeting. Churches said they'd administer funds, teach money management, and provide caring volunteers—as long as they weren't matched with drug addicts and the county didn't smother them in red tape.

Agee and her colleagues listened, and created C-DAP from the grassroots up, rather than from the bureaucracy down. Too often, she admits, bureaucrats don't understand what's going on out in the community because they're not in field. "Every time we came back from a [focus group]," she says, "we changed the program, modifying it on the basis of that feedback."

Rather than issuing a vague plea for the churches to "adopt" welfare recipients, C-DAP personnel clearly define the program's expectations. Churches and C-DAP participants sign written agreements specifying the responsibilities of each. For example, churches are not to be approached for financial aid, and participants are the ones responsible for seeking employment. The volunteers' role is to "do with" the clients, not to "do for" them. Budget counseling is an important focus: Volunteers and C-DAP participants agree to develop a responsible spending plan immediately. The average participant, with three kids, gets a $4,200 allowance over six months (in addition to food stamps and other noncash subsidies).

Ed Kirk and other church volunteers report that most participants "needed a lot of education" when it came to finances. "Some of the young mothers we've worked with didn't realize they were spending 50 percent more than their income," comments a Methodist volunteer. He showed one participant how her two phone lines, call waiting service, and deluxe cable TV package added a hefty burden to her monthly bills. Kirk remembers taking Jane to the dry cleaner: "Cripes! She dropped off pleated skirts, and it just about depleted her money for the whole week!" Initially, C-DAP participant Tierra says she disliked the influence the team had over the use of her money. "But I wasn't doing so great a job," she admits. "I needed the help with budgeting."

Prior to the federal welfare reforms passed last fall, C-DAP was financially front-loaded: The church had 12 months' worth of funds to spend in six months. This made it possible for volunteers to tackle large, immediate barriers to employment. With cash in hand, they could obtain expensive car repairs and so enable participants to get to work; pay off debts that weighed participants down; or get recipients' telephone service restored so they could make and receive calls about jobs. Under the new welfare rules, C-DAP participants will receive only six months' worth of cash assistance for the six-month period.

Sponsoring churches may be willing to contribute their own money if C-DAP officials let them. This isn't a pipe dream: Churches involved in northern Virginia's Project HOMES pay the security deposits and first month's rent for the homeless families they mentor, and congregations participating in the Tidewater area's Partners in Hope project do the same for the battered women they assist. In Mississippi, churches participating in Faith and Families have given their "adoptees" grants of up to $1,500.

Another key to C-DAP's effectiveness is that it employs a team approach rather than one-to-one mentoring. This cuts down on volunteer burnout, increases the participants' network of contacts, and allows volunteers to find their own niche. In the cases I studied, usually one team member took on the role of day care shopper, taking the participant around to different centers and babysitters to find an affordable, convenient option. Others listened for job openings and coached participants on their interview skills, another helped with transportation, and another provided budget counseling.

C-DAP also supports volunteers by hosting occasional meet-

ings where teams from different churches gather to swap stories and learn from each other's experiences. "That was extremely useful," says one volunteer. "In hearing from the other church volunteers, I realized we were too soft with our participant. You don't want to pry. All the volunteers felt that. But then you realize that that's what you have to do." A man from a Catholic church added that while his team had "tried to develop a good rapport" with the participant through friendly, supportive conversation, sometimes it was necessary, though uncomfortable, to probe and "root out the problems," such as misplaced spending priorities or a disinclination to save. Knowing that other volunteers were doing this, and finding it effective, reassured him.

Finally, C-DAP personnel were prepared to play the heavy if a participant was not fulfilling her end of the bargain. Remy Agee would meet with her, review the original contract, discuss areas for improvement, and add specific action items to the agreement that the participant needed to complete by a deadline. "I'd tell them that this is a voluntary program and you don't have to be in it," Agee says. "But if you're going to be in it, then you've signed an agreement and you need to keep it."

> C-DAP volunteers expected participants to make meetings with them, keep job interview appointments, and stick to their budgets. Volunteers encouraged thrift, punctuality, sexual restraint, and personal responsibility. They were willing to challenge self-destructive behavior or attitudes that hindered participants' progress. This was something the old welfare system rarely did.

According to C-DAP statistics, church volunteers spend an average of 400 hours with their participants over a six-month period. Some of the teams from the seven churches I surveyed had put in considerably more time—over 500 hours. "To get people back on their feet," Ed Kirk explains, "it's not just about getting a job. It's about getting all their problems solved." And Jane had a *lot* of problems. Her license had been revoked because of unpaid traffic fines. An acquaintance borrowed her car and wrecked it. She lived in an area not served by public transportation. The father of her son provided no assistance, and her family had written her off years before, when she'd gotten hooked on drugs.

"She owed money on her car loan," Kirk says. "She owed money to a hospital. She owed back state and federal taxes. Cripes! If they don't resolve each one of these problems, they're no better off than they were the day you met them." Most of these problems had to be handled during normal business hours, when Jane was working. So Kirk met with the bureaucrats, called the creditors, and drove to Washington to meet with the IRS, while his wife, Elaine, took Jane's toddler to the doctor if he got sick at the babysitter's. "It was a full-time job," Kirk says.

That reality points to the necessity for struggling individuals to re-affiliate with their families and seek aid from diverse sources. Recognizing the significant challenges Jane faced, Kirk encouraged her to contact her relatives and to begin attending a church near her home. Members of that church ended up providing a lot of free babysitting and transportation, thus easing the burden on the Kirks. To get her driver's license reinstated, Jane needed to pay traffic fines. So Kirk suggested that Jane call her father and explain that she was trying to make a fresh start in life. Her father paid half of the fines, while Jane used C-DAP funds for the other half. After some refresher driving lessons from Ed—and Jane's receipt of a donated used car through the county Department of Social Services—she was mobile once again. Several months after the Kirks began working with Jane, Jane's brother and sister-in-law also stepped forward and offered assistance.

Agee says this pattern is common. When weary family members see that their needy relative is receiving crucial emotional and personal support, they become more willing to help. They seem to have greater confidence that perhaps this time real change will occur.

Jane's bumpy ride to independence from welfare demonstrates clearly why reform was necessary. After all, if it's tough for a group of diligent, dedicated volunteers putting in many hours to help a person exit welfare, it's virtually impossible for a government caseworker, who doesn't have one-tenth the time, to help a client do so. "With their high caseload, [case]workers can provide only limited support," Agee observes. In my own county, according to Bryan Betts, management analyst for the Albemarle County, Virginia, Department of Social Services, a caseworker typically juggles 19 cases each month. County statistics indicate that caseworkers spend, on average, 6.5 hours a month on each case. The six-month total, then, is 39 hours dedicated to one welfare recipient—versus the 400 to 500 hours logged by the C-DAP volunteer teams.

And it's not just the quantity of time that is important. The quality of the relationship matters too. C-DAP participants said personal support made a huge difference. Last Mother's Day, Jane called Elaine Kirk and thanked her for "being like a mom." She also said that if Ed hadn't picked her up every day in those first few months, she would have skipped work. But she knew she had to get up and keep trying because he and Elaine were working so hard to help her. Now, many months later, Jane and the Kirks still keep in touch. "We'll never forget her," Elaine says, "and she says she'll never forget us."

Tierra, a stocky, feisty 37-year-old mother of three who's now in a manager-trainee program at a dry cleaning store, said she appreciated her team's "tough love." Somewhat unexpectedly, she reports, she clicked best with the volunteer who pushed her the hardest. "She was straight up, and I liked that," Tierra says with a smile. She confesses that she used to have a bad attitude that got in her way. I ask her what it takes to change someone's attitude. "Another person caring," she declares. "These are *volunteers* doing this. It's not a job. They care about you."

Some of the participants initially expressed concern that the team members might pressure them to join their church, but

these fears never materialized. C-DAP staff told the churches that their involvement was not an opportunity for proselytizing. They really didn't have to, since church members saw their participation as community service, not missionary work. They invited participants to social events at the church, but, in the words of a Lutheran volunteer, "we did not press religion on our participant." Nearly all the volunteers were quiet about their faith, witnessing through deeds more than with words.

They didn't put their values on the shelf, however. They expressed frustration when participants "didn't appreciate the urgency of getting to work on time or straightening out [their] finances," as volunteer Glenn Parker puts it. They expected participants to make meetings with them, keep job interview appointments, and stick to their budgets. Volunteers encouraged thrift, punctuality, showing respect on the job, sexual restraint, and personal responsibility. In short, they were willing to challenge self-destructive behavior or attitudes that hindered participants' progress. This was something the old welfare system rarely did, and really could not do very well, since it is best done in the context of a personal relationship of care, candor, and trust. C-DAP put welfare recipients into such friendships with caring individuals, who also took time to impart basic life skills—time management, keeping a checkbook, budgeting, smart shopping—essential to achieving and maintaining independence from public assistance.

C-DAP has many strengths. There's no bureaucratic inertia: The county's social services staff have modified the program as they've heard constructive criticism from front-line volunteers. Red tape is minimal. The volunteers often go beyond the call of duty. Taxpayers' money is spent carefully, in conjunction with a strategic plan for gaining stable, full-time employment. Welfare recipients are encouraged, treated with dignity, and given attentive, individually tailored assistance. Several have made remarkable progress in the face of overwhelming obstacles. As noted earlier, two-thirds of the C-DAP participants are now off the dole.

Still, if the real goal is genuine economic self-sufficiency rather than independence from cash aid, the statistics are a bit more sobering. By this criterion, only four of the 13 cases I examined were clear successes. Four others were clear failures and five were mixed. Such numbers force us to accept that even a good program—and C-DAP is very well conceived and managed—is no panacea. Ultimately, the individual recipient holds the key to success. As one volunteer put it, "All we can do is try to steer these people. If they don't really want to go, you can't force them." And some who do want to go lack the education, marketable skills, or reliable transportation needed to secure jobs with salaries that support two or three kids. Those with a good attitude and solid work ethic can move up over time, but without adequate transitional assistance such as day care subsidies and food stamps, they probably won't make it.

Fortunately, under the new welfare reforms many recipients will receive day care subsidies and medical assistance even after they are no longer eligible for cash aid. These measures address the "cliff effect" problem many C-DAP participants have encountered in the past. "We were really angry that as soon as [Donna] got a job, her rent went from $25 to $425 a month and she lost most of her food stamps," complained church volunteer Kathy McFadden. A Methodist volunteer agreed: "The clients need at least six months of earning a salary before they can even begin to take on some of the expenses that they're going to have to take on. The medical and day care assistance should continue for at least a year. We can't just cut them off and say, 'OK, now you're working, so you're no longer eligible for help.' They're not really self-sufficient yet."

Remy Agee enthusiastically reports that nine new churches are "ready and waiting" to be matched with C-DAP participants. Concurrent with the growing enthusiasm for C-DAP, though, is a disturbing rumbling in a segment of Maryland's religious community. A coalition claiming to represent 250 congregations recently met with Governor Glendening and told him they would not participate in "dehumanizing" welfare reforms, complaining that the government was abdicating its responsibilities and "dumping" the poor on the churches.

Agee says she's not really worried about this development, because she believes the coalition mainly opposes the state's "third party payee" idea. This proposal tries to address what happens when a parent is kicked off the welfare rolls because of noncompliance with the new rules, such as work requirements. To ensure that such children continue to receive the aid they need, the state wants churches to administer the kids' cash aid and food stamps. Agee says that program is distinct from the C-DAP initiative, so the coalition's activities won't hamper C-DAP's growth.

Religious leaders in other states have also been critical of welfare reform, but this need not hinder a new engagement of churches in this era of welfare devolution. While the denominational headquarters may be crying foul, many average pew sitters are not. John Wells, director of a network of mainline churches in Virginia called Community Ministries, reports that what he hears from local pastors contradicts the official messages articulated by denominational leaders. "The Spirit is not very alive in many of our churches, and the preachers know it," he says candidly. "They are hungry for opportunities to put in front of their members opportunities to get personally involved in ministry." Wells criticizes national religious leaders whose emphasis on mobilizing parishioners in partisan lobbying efforts distracts the laity from a humble, hands-on service that can deepen their faith.

The Washington Post reported on the Maryland coalition's stormy meeting with Glendening just a few days before I interviewed Dot and Annette, C-DAP volunteers from the Severna Park United Methodist Church. They were exasperated by the coalition's attitude. Rather than disavowing its duty, they argued, the church should be stepping up its efforts. "We've been critical of welfare before because it didn't seem to be helping people," says Dot. Now that it's changed, she reasons, "we've got to put our actions where our mouths are." ◆

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Taxing Times

Squabbling between flat taxers and sales taxers could allow the Internal Revenue Code to escape unscathed.

By Daniel J. Mitchell

Imagine, if you will, a damsel in distress. She has been captured by an evil ogre, who is dragging her into a dark forest for unspeakable purposes. Riding to her rescue are two gallant knights, each possessing strength, virtue, and courage. But both knights are so anxious to be the hero that they fight each other for the privilege of defending the lady's honor. They are so consumed by this contest that the ogre is able to sneak off with the damsel, giving our story an unhappy ending.

Unfortunately, the same thing may happen with tax reform. Economists have long argued that America's multiple-rate, loophole-ridden tax code penalizes productive behavior. The good news is that most Americans, including a surprisingly large number of politicians in Washington, agree that the current system stinks. The bad news is that advocates of change are divided between proponents of a flat tax and proponents of a national sales tax. (For an outline of the debate, see "Rewriting the Code," July 1995.) And just as the squabbling between the knights allowed the ogre to escape, any disunity among the tax reformers will strengthen the ability of special interest groups to defend the status quo.

Since congressional Republicans haven't decided upon a unified strategy for replacing the current Internal Revenue Code, flat tax and sales tax advocates will spend the next couple of years vying for the hearts and minds of Americans who want genuine reform. The flat tax advocates include House Majority Leader Dick Armey (R-Tex.), likely GOP presidential contender Steve Forbes, Citizens for a Sound Economy, and Grover Norquist's Americans for Tax Reform, while the Cato Institute and Citizens for an Alternative Tax System back a retail sales tax. Armey has introduced a bill that would replace the current income tax with a 17 percent flat tax. A proposal backed by Deputy Majority Whip Billy Tauzin (R-La.) and Rep. Dan Schaefer (R-Colo.) would replace the income tax with a 17 percent retail sales tax.

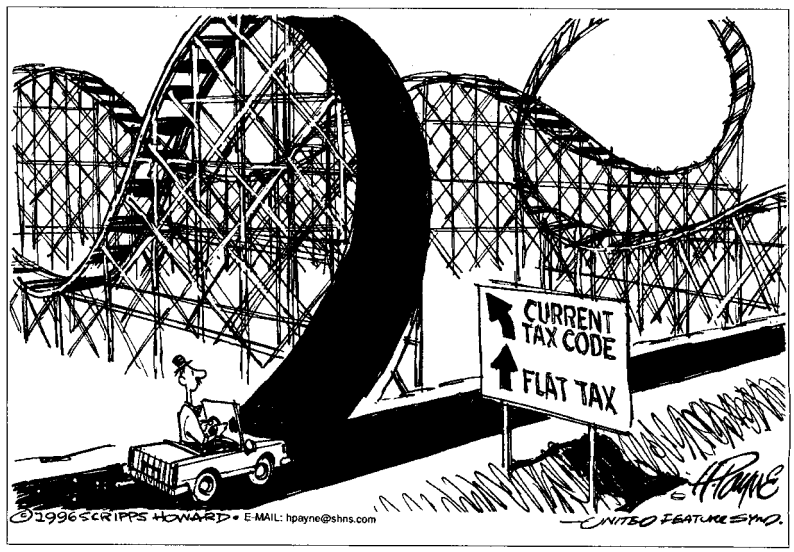
What makes this split particularly frustrating is that the flat tax and sales tax are virtually identical. Both would junk the current system. Both would restore fairness by taxing at one low rate. Both would eliminate all forms of double taxation, and both would wipe out special preferences. The only real difference between the two would be the collection point: The flat tax imposes one low tax rate on income when it is earned, and the sales tax imposes one low tax rate on income when it is spent.

In the long run, the biggest winner in the debate between the flat tax and the sales tax may turn out to be the current system. There is an obvious solution: Either sales tax fans have to rally behind the flat tax, or flat tax partisans must shift their allegiance to the sales tax. That transition should happen in the next year or two so that both sides are united and fully prepared for the tax reform battle after the next presidential election. The question, of course, is which side should give in. As a flat tax advocate, I clearly have some biases. Nonetheless, I have defended the sales tax in speeches, in the press, and in congressional testimony. I am perfectly willing to abandon the flat tax if there is compelling evidence that the sales tax is a more politically realistic way of achieving our goals.

But to convince me that the sales tax is better than the flat tax, supporters of the sales tax need to answer some questions. Their inability to answer these questions may suggest that they, rather than advocates of the flat tax, need to change horses.

• *Since no political jurisdiction in the world has ever successfully replaced an income tax with a sales tax, why should we believe the United States is different?* I see no plausible scenario in which a sales tax could receive 51 votes in the Senate, 218 votes in the House, and a presidential signature. The sales tax also has not fared well in public opinion polls. Perhaps major advertising and promotional campaigns could change the political dynamics, but an honest assessment of the potential impact of such an effort also has to consider the possible effectiveness of a negative campaign by defenders of the status quo.

• *Advocates of the sales tax rightly insist that it be accompanied by complete, irreversible abolition of the income tax, which would require repeal of the 16th Amendment. Would it be possible to obtain the required two-thirds vote in both houses of Congress and ratification from 38*



HENRY PAYNE

state legislatures? Even amendments that garner 80 percent or more in polls, such as a balanced budget amendment, have a hard time getting two-thirds majorities in Congress, to say nothing of the obstacles an amendment would face getting three-fourths of the states to ratify. Failure to permanently kill the income tax would create the risk that we would be stuck with both an income tax and a sales tax.

• *Would repeal of the income tax entail elimination of payroll taxes?* The only sales tax proposal that has actually been turned into legislation is the Tauzin-Schaefer bill, which does not repeal the Social Security and Medicare payroll taxes. While these taxes are not as economically harmful as the personal income tax (largely because they are a version of the flat tax, imposing one rate on a proper definition of income), there's always the risk that politicians would gradually alter the payroll tax so that it degenerates into something that more closely resembles the current progressive income tax.

• *Trying to eliminate payroll taxes would bring Social Security into the tax reform debate. Would it be possible to simultaneously reform the tax code and make a major change in Social Security?* Americans for Fair Taxation has proposed using the sales tax to replace both the income tax and the payroll taxes. Yet any attempt to eliminate the payroll taxes would require supporters to grab the "third rail" of American politics with two hands. Opponents will exploit the opportunity to instill fear in senior citizens as they attempt to kill any legislation.

• *If the income tax is eliminated, how will the government determine eligibility for means-tested programs?* Presumably, neither flat tax nor sales tax advocates are sympathetic to coercive income redistribution, but it would be very difficult to simultaneously reform the tax code and eliminate all of these programs. As with Social Security, it would be a shame if prospects for tax reform were dragged down because of a tangential issue. Sales tax supporters should therefore develop an easily understood, politically realistic alternative for determining eligibility.

• *Many Americans flinch at the thought of paying a sales tax on such big-ticket items as cars. Has there been any polling to determine an effective response to demagoguery on this issue?* Clearly, if your take-home pay increases by 17 percent because the income tax is repealed, a 17 percent sales tax could not possibly leave you worse off. Yet opponents can be expected to capitalize on the sticker-shock effect, and an intensive educational effort would be needed to counter them.

• *Speaking of demagoguery, what is the most politically astute way to answer those who would exempt from the sales tax services such as leukemia treatments for poor children or products such as wheelchairs for muscular dystrophy sufferers?* Sales taxes throughout the United States and value-added taxes around the world are riddled with loopholes. Opponents will try to kill the sales tax by exploiting these sensitive issues. And special interest groups, representing certain industries or consumers, will work hard to carve out exemptions. Sales tax advocates need to acknowledge that granting tax-free status to any group of products or services will put upward pressure on the tax rate, which will create additional incentives to seek out more loopholes, putting even more pressure on the rate, and so on.

• *While items such as food and medicine are considered worthy of exemptions, there are many which could receive hostile treatment. Is there any strategy for avoiding discriminatory tax treatment of tobacco, caviar, liquor, and other politically incorrect products?* Like the flat tax, the sales tax is based on the principle of getting the government out of the business of using the tax code to direct economic decisions. But certain products and services will draw fire from those who like imposing their values on the rest of society. Any campaign to adopt a sales tax needs an effective strategy to prevent the bill from becoming a Swiss-cheese-like amalgamation of special preferences and penalties.

• *Is it realistic to believe that a sales tax would pull in revenue from the underground economy, as supporters often assert?* Neither the flat tax nor the sales tax is likely to have much of an impact on the underground economy, for the simple reason that lawbreakers do not want the government to know what they are doing. A prostitute is not going to pay a flat tax on her income, and she is not going to collect a sales tax on her services. Sales tax advocates make a big deal about how she would pay a sales tax when she buys her leopard-print hot pants. But that's much like saying that her customers would pay a flat tax on the income they use to obtain her services. There is an equal amount of leakage in both tax systems.

• *If the sales tax becomes a value-added tax, which taxes the "value added" to a product or service at each stage of the production process (with the result that the final effect on the retail price would be the same), would supporters of the sales tax back away?* Because it is much simpler to administer and much less susceptible to evasion, lawmakers would be tempted to impose a VAT rather than a national sales tax. Free market supporters traditionally have been skeptical of a VAT, viewing it as a hidden tax that would become a money machine for politicians. Lawmakers could mitigate that problem by requiring that the VAT appear separately on bills and receipts (much like the sales tax) rather than be included in the list price of a product. Nations as diverse as Japan, New Zealand, Canada, and Mexico have taken this route. Sales tax proponents need to be clear about what conditions, if any, would have to be satisfied before they would support a VAT.

• *Is it an overstatement to argue that the sales tax would eliminate the IRS?* Just as it is wrong to claim that a sales tax (or, for that matter, a flat tax) would collect large

Neither the flat tax nor the sales tax is likely to have much of an impact on the underground economy, for the simple reason that lawbreakers do not want the government to know what they are doing. A prostitute is not going to pay a flat tax on her income, and she is not going to collect a sales tax on her services.

amounts of money from the underground economy, it is silly to think that any tax system could exist without a tax collection agency. Yes, a sales tax would allow a huge reduction in the size of the IRS (as would the flat tax), but it is an exaggeration to assert that the government will somehow seize more than $1.5 trillion from the economy without revenue agents snooping around. And it's misleading to claim that the IRS would be abolished simply by giving it a new name or shifting tax collection to the state level.

• *To prevent giving government a big competitive advantage over the private sector, sales tax supporters would impose a payroll tax, paid by the employer, on government wages. Barring a reduction in the gross pay of government workers, this would boost government spending. With both parties worshiping at the shrine of budget balance, how would this spending increase be financed?* Many believe that all prices will rise by a certain amount following the adoption of the sales tax, so it is only logical to expect the cost of government to rise by a similar amount. Others believe the elimination of imbedded income taxes will cause prices (excluding the sales tax) to fall and that this price reduction would include falling wages for government workers. Despite the merits of these arguments, opponents would label the increased spending a budget buster. The alternative —cutting the pay of government workers —might create even greater political obstacles.

• *Current sales tax proposals include a universal rebate to protect the poor, but how likely is it that the public would support a plan that has the government send checks to Bill Gates and Donald Trump? And if lawmakers decide that some people should not get the rebates, wouldn't the government need income calculations to determine eligibility?* Sales tax supporters will argue, as have I, that the rebate is a sound proposal and that it serves the same purpose as the flat tax's family allowance. In the rough-and-tumble world of politics, however, this could be a very hard position to defend. If this battle cannot be won, the government will maintain the authority to monitor peoples' incomes, thus undercutting one of the strongest reasons for adopting a sales tax. And such a program could be highly susceptible to fraud. The closest analogy we have in current law is the Earned Income Tax Credit, which the government admits has an error or fraud rate exceeding 25 percent.

If enacted as its supporters envision, a national sales tax would yield spectacular benefits for the American economy. Like the flat tax, it would increase after-tax incomes, stimulate job creation, boost savings, safeguard civil liberties, and reduce political corruption. The key question, however, is whether the sales tax can overcome the political obstacles outlined. The flat tax, of course, faces political obstacles as well. The home mortgage and charitable contribution deductions have been thorny issues. Defenders of the status quo also have scored points by falsely claiming that dividend and interest income would be tax-free in a flat tax world, and they have had some success making the same argument about capital gains. There are other politically sensitive issues that haven't yet been exploited by opponents of the flat tax, such as the elimination of the tax preference for employer-provided health care.

On the other hand, the flat tax has been battle-tested. Not only has it been widely condemned by the left, it also was attacked by much of the Republican establishment during the 1996 presidential primaries. These attacks chipped away at the flat tax's popularity, but it still generates 40 percent to 65 percent support in polls (depending on how the question is worded). The sales tax, by contrast, attracts only about 30 percent support—a figure that might well erode during a negative campaign.

In the short term, proponents of the flat tax and sales tax should spend less time attacking each other and more time mounting a unified assault on the current system. Then, as we get closer to 2001, both sides should honestly assess the political landscape and unify behind the reform with the greatest chance of passing. The main objective, at least for those of us who believe in equal treatment under the law and who want a tax system that does not penalize productive behavior, is that one or the other of these good plans replaces what we have now. ◆

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The Stance Of Atlas by Peter Erickson examines the philosophy of Ayn Rand.

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Congress would rather complain about life-tenured federal judges than make recalcitrant bureaucrats enforce the law.

By Michael W. Lynch

With their compromised budget deal behind them, Republican congressional leaders turned their attention to a refreshingly soft target: the federal judiciary. In mid-May, the House Judiciary Committee's Subcommittee on Courts and Intellectual Property held a hearing on judicial impeachment. The hearing highlighted several instances of judicial misbehavior, but the impeachment advocates' poster child is clearly Northern California District Judge Thelton Henderson, who blocked the voter-approved California Civil Rights Initiative on flimsy constitutional grounds.

The troubling aspect of the impeachment movement is not the saber rattling. It is what this movement says about the willingness of Congress to lead on critical issues. One gets the feeling Congress is taking on the judiciary because, unlike President Clinton and the members of his administration, life-tenured judges tend not to talk back when they come under temporary political fire.

More important, focusing attention on individual judges deflects attention from the fact that in some very critical areas—labor law, environmental law, and civil rights—federal courts have handed down some sound opinions, only to find them all but ignored. If fully implemented, such Supreme Court decisions as *Communications Workers of America v. Beck*, *Dolan v. City of Tigard*, and *Adarand v. Peña* would restrict the range of federal and local bureaucrats and defund some of the interest groups whose sole purpose is to expand the state. The challenge of implementation lies not in the courts but in the bureaucracies, both federal and local.

On the issue of civil rights, the Clinton administration has done far more to stall the movement to color-blind decision making by government than Judge Henderson, whose restraining order against the CCRI, after all, was overruled by a panel of three appellate judges. (The CCRI is still not in effect though, as it is stayed pending a decision on whether the panel's decision will be reviewed by a majority of the 9th Circuit.) If Congress truly cares about this issue, it has two fronts on which to advance. It could hold oversight hearings to scrutinize the Justice Department's interpretation of recent federal court decisions. It could also pass legislation to clarify the meaning of the 14th Amendment's Equal Protection Clause.

While Henderson is certainly a speed bump on California's highway to color-blind law, in recent years the U.S. Supreme Court has supported the idea that governments should not categorize people by race. In 1989, the Court ruled in *Richmond v. Croson* that the city of Richmond's 30 percent set-aside for minority contractors was unconstitutional. Finding the program grounded more in power politics than past discrimination, the Court ruled that any government program using race as a decision making factor must pass the judicial test of "strict scrutiny." This means that the government must prove a "compelling interest" in using race based on past discrimination rather than unequal societal outcomes. Any anti-discrimination program must also be "narrowly tailored" to meet its ends, limited in both scope and time. *Croson* applies these criteria only to state and local governments.

In June 1995, a few months after Republicans took over Congress, the Supreme Court extended the principles it laid out in *Croson* to the federal government in *Adarand v. Peña*. "All racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny," wrote Justice Sandra Day O'Connor for the majority. In his concurring opinion, Justice Antonin Scalia emphasized the universality of American citizenship. "Under the Constitution there can be no such thing as either a creditor or a debtor race," wrote Scalia. "We are just one race in the eyes of government."

Less than a year later in March 1996, the U.S. Court of Appeals for the 5th Circuit declared the University of Texas Law School's racial admission system unconstitutional in *Hopwood v. State of Texas*. In this case, the court applied the strict scrutiny test to higher education admission

HENRY PAYNE

policy and found "no compelling justification, under the Fourteenth Amendment or Supreme Court precedent, that allows [the University of Texas] to continue to elevate some races over others, even for the wholesome purpose of correcting perceived racial imbalance in the student body." *Hopwood* removed the foundation on which affirmative action in higher education rests: the need for diversity. The Supreme Court refused to hear the case on appeal, making *Hopwood* the law in Texas.

The courts have provided Congress with both the tools and the rhetoric with which to make significant progress on restoring universal civil rights. And while Congress has done precious little with them, the White House has executed an end run around these decisions.

At the time, *Adarand* was seen as a major setback for the quota establishment, but the Court did not entirely rule out the possibility of racial preference programs. O'Connor wrote, "It is not true that strict scrutiny is strict in theory but fatal in fact." Nearly two years later, strict scrutiny has in fact rarely been fatal. Of the 160 programs the Congressional Research Service identified as using race preferences in February 1995, only one has been ended in the wake of *Adarand*. In May, the Justice Department published its proposed regulations to bring the government into compliance with *Adarand*. These regulations were so tepid, says Clint Bolick, director of litigation at the Institute for Justice, that they wouldn't end a single program.

It isn't surprising that *Adarand* spurred little change. "The notion that what the Court says is the last word is completely wrong," notes Abigail Thernstrom, senior fellow at the Manhattan Institute. "What the Court says 10 times in 10 decisions in strong language starts to become the law," but the process is faster if those who enforce the law support those decisions. Unfortunately, the Clinton administration has turned over its policy to a civil rights establishment that will fight *Adarand* and its progeny to the death.

When exposed to the public, Clinton's "extend it, don't end it" policy on affirmative action has been singularly unpopular. This makes Congress's lack of a broad agenda in this area—and its reticence to expose the administration's actions—all the more troubling.

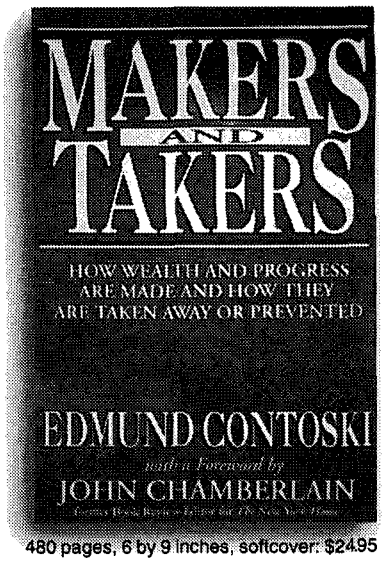
Consider the resistance Norma Cantu, the head of the U.S. Department of Education Office for Civil Rights, faced when she tried to unilaterally overrule the *Hopwood* decision. In March, Cantu put Texas officials on notice that *Hopwood* was binding only on the University of Texas Law School and that other state-run schools in Texas risked losing $500 million in federal funding if they didn't maintain racial preference programs. Cantu based her edict on the Clinton administration's policy of "nonacquiescence."

William Kanter, deputy director of appellate staff in the Justice Department's civil division, described this position in a letter to an appellate court clerk: "[T]here is no constitutional requirement or any other inflexible rule that a federal agency must apply the legal principles announced in a court of appeals decision to the administration of a statutory program, either generally or in matters arising in that particular circuit." In other words, Clinton's regulatory bureaucracies appear to believe they are not bound by appellate court decisions, even in the circuit in which they are handed down. Kanter noted that the "Acting Solicitor General...agrees with the positions taken in the letter."

Cantu's attempt failed. After stories on her edict appeared in *The Chronicle of Higher Education*, *The New York Times*, and *The Wall Street Journal*, public outrage and attention from the Texas congressional delegation, including a promise by Sen. Phil Gramm (R-Tex.) to examine her budget, forced a reversal. On April 10, Walter Dellinger, the acting solicitor general, instructed the Office of Civil Rights that "the *Hopwood* panel decision is binding in the Fifth Circuit."

Dellinger's letter, however, raises a conflict that Congress would do well to look into. Kanter's position is that circuit court decisions aren't binding on federal agencies. But when Cantu applied this logic to a highly charged issue in Texas, she was instructed by Dellinger that this was *not* the policy. The question remains whether Dellinger's letter represents a one-time reversal or a change in policy.

In the same *Wall Street Journal* article that helped to expose Cantu, Terrance Pell of the Center for Individual Rights wrote of another case in Texas that indicates the Clinton administration is still following its



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policy of nonacquiescence.

Since 1978, Houston's Metropolitan Transit Authority of Harris Country (METRO) has maintained a preference program for minority contractors. The program set a target that 21 percent of the dollar amount of any construction project must go to firms owned by women or select minorities. The 21 percent goal was written into the terms of the contracts, and bids that didn't meet the goal could be summarily rejected. In 1993, the Houston Contractors Association, which represents road construction firms, challenged the target as unconstitutional. In April 1996, a federal district judge issued a temporary injunction halting the program.

This injunction didn't sit well with the Department of Transportation's Federal Transit Administration, which funds a portion of METRO's construction budget. FTA claims its regulations require METRO to maintain minority preferences and threatened to cut all funding unless METRO reinstated the program. Caught between two conflicting federal masters, METRO created a new program that granted preferences to small businesses, regardless of the race or ethnicity of the owners. This satisfied the judge, but not the FTA, which insists on racial preferences. To date, the FTA has withheld $326 million in federal funding for proposed METRO construction projects. So METRO finds itself in a dilemma: One branch of the federal government says it can't use race as a factor in awarding contracts. Another branch won't give METRO any money to complete the contracts unless it uses race in awarding them.

"The left hand of big government doesn't know what the right hand is doing," says Tony Rudy, press secretary to House Majority Whip Tom DeLay, who represents part of Houston. Rudy is right. But DeLay doesn't seem eager to elevate the issue, preferring instead to work for a quiet fix, possibly by putting an amendment on a transportation funding bill.

This would be a perfect opportunity to hold hearings to: a) put the ridiculous and overbearing nature of the federal government on stage; b) reaffirm the fundamental principle that all citizens should be treated equally; and c) highlight the Clinton administration's overreaching interpretation of its powers under the Constitution. After all, if a federal judge in California enjoining a voter-approved initiative warrants hearings, so too should an executive branch claiming that it isn't bound by federal court decisions with which it disagrees.

And then there's the legislative option. The Republicans do control Congress, and if they feel that Henderson has egregiously misinterpreted the 14th Amendment, they could pass a law emphasizing that the guarantee of equal protection of the law means that federal law should treat each individual equally, regardless of race or class. In the 104th Congress, as Californians were having a healthy debate over the California Civil Rights Initiative, bills to rid the federal government of preferences sponsored by Rep. Charles Canady (R-Fla.) and then–Sen. Bob Dole (R-Kans.) enjoyed on-and-off support from the congressional leadership.

Earlier this year, House Speaker Newt Gingrich (R-Ga.) took center stage at a Washington gala dinner honoring Ward Connerly, chairman of the CCRI campaign, and professed his support for the winning side in that battle. Although he spoke boldly of the evils of "affirmative racism" at this event, Gingrich later signaled he wouldn't support a federal law to end racial preferences. After a meeting in late May with Connerly, however, Gingrich backed away, indicating that he may indeed support such legislation. Canady plans to reintroduce his bill this year, but without the unambiguous support of leadership, it faces long odds.

There are signs that the Republicans are attempting to move their civil rights agenda forward in Congress. In May, the House Judiciary Committee's Subcommittee on the Constitution held an oversight hearing at which members grilled Isabelle Katz Pinzler, acting assistant attorney general for civil rights, about the Justice Department's position on the meaning of the Equal Protection Clause and the proposed regulations in response to *Adarand*. The subcommittee plans to hold additional hearings later this summer. On the Senate side, the Judiciary Committee is planning civil rights oversight hearings in June, and at least one committee member has written Attorney General Janet Reno, asking her to clarify the administration's position on whether government agencies are bound by federal court rulings with which they disagree.

Cornell legal scholar Jeremy Rabkin notes that politicians often like to have it both ways with the courts. "The courts are a two-sided shield," says Rabkin. "In the 1960s, the people could say that the courts made us do it, even though it was the Justice Department pushing it. Now we have Republicans in Congress saying the courts are doing it, and it becomes a way for them to excuse their passivity."

Rabkin's comments point to why the Republicans focus on the judiciary is troubling. This focus could complement a strong legislative agenda aimed at relimiting government one step at a time. But it will more likely become the second sibling in the twin excuses for the failure to move forward on such an agenda, the first being the difficulty in passing bills over Clinton's threatened vetoes.

The problem of our polity lies not primarily in the courts but with politicians. Smaller, less intrusive government is not going to come about by indiscriminately beating up on federal judges, even if more than a few deserve a good knock on the noggin. It will require congressional leadership to articulate the case for relimiting government by offering examples of how a government unrestrained by the rule of law abuses the very citizenry from which it derives its powers. Some of these examples may come from judicial overreach, but they must be tied to a broader agenda.

Speaking at the Cato Institute in May, *Weekly Standard* Editor and Publisher William Kristol noted that congressional Republicans seemed to be seeking a content-free politics for the next two years in the hope of holding their congressional majorities in 1998. Kristol, who was speaking on the budget deal, warned that this dream would prove elusive. He is right. Politics will be content-driven. The choice facing congressional leaders is whose content will drive politics—the agenda of those seeking to limit government or of those seeking to further its expansion. At present, for the lack of an alternative, it seems the latter is prevailing. ◆

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Environmental Injustice

How green ideology denies poor blacks good jobs

By Henry Payne

The Claiborne Enrichment Center would appear to be a perfect presidential photo-op. Poised for construction in northern Louisiana's Claiborne Parish, one of the state's poorest counties, the $855 million, state-of-the-art nuclear fuel enrichment facility—50 times more energy efficient than existing plants—would bring jobs and millions of dollars in tax revenue to this 50 percent black jurisdiction. It also would reduce American dependence on foreign enrichment suppliers. The plant showcases one solution to the nagging '90s questions of how to build environmentally sound industries, keep American industrial jobs, and return those jobs to blue-collar communities.

But since the project was announced, the plant's licensing has been fought every step of the way by the Clinton administration and its allies in the environmental and civil rights movements. In Claiborne Parish, the soaring rhetoric of environmentalism and civil rights has come to earth in the form of federal regulation—and fallen on the very ideals it promised to lift up.

In 1989, when Louisiana Energy Services, a consortium of five energy companies, announced the siting of its new facility outside Homer (population 4,600), the locals cheered. "We're elated," gushed Joe Michael, then mayor of Homer, the largest town in a county where 30 percent of the residents live below the poverty line. "It's going to raise the standard of living for all our people."

Upon breaking ground in 1992, Louisiana Energy Services would pay about $10 million to the county school board as a one-time parish "use tax" on equipment. After construction and a 10-year "enterprise zone" exemption, the plant would pay $8 million a year in taxes and double the county's tax base. The construction project would employ 400 people, and the completed plant would hire 180. Only 21 of those jobs would demand nuclear-related experience.

The facility's economic impact would also be felt beyond the county's borders. America's only existing enrichment facilities, which separate fissionable U-235 atoms from natural uranium to make nuclear fuel, are owned by the U.S. Department of Energy. While these plants still provide the bulk of America's enrichment needs, they are expensive, 50-year-old energy guzzlers. As these dinosaurs aged, modern European facilities gained U.S. and world market share by offering cheaper enrichment services. In the past 10 years, the foreign share of the U.S. market has increased from 10 percent to 25 percent. The Claiborne plant would reverse that tide and expand America's export market.

The Claiborne plant precedent will discourage the nuclear and chemical industries from opening new plants. They will at least be located far from black neighborhoods, and therefore far from blacks seeking jobs. At worst, they will not be located in the United States at all.

But to anti-industry environmental groups, the project was a call to arms. A local environmental group, Citizens Against Nuclear Trash (CANT)—with help from the Sierra Club—filed a series of safety complaints with the Nuclear Regulatory Commission, seeking to block construction. In 1993, they got additional ammunition from President Clinton himself. A presidential directive on "environmental justice" required all federal agencies to protect minorities from disproportionate exposure to pollution. After an approval process that dragged on for seven years, in 1996 the NRC declared the plant safe.

Like all nuclear facilities, the Claiborne plant would produce depleted uranium. But the waste would be much less radioactive than spent nuclear fuel, which is about 1,000 times as potent. The facility would dispose of the waste in on-site, sealed containers that would be removed every 15 years. In truth, the danger from an enrichment facility is not radioactive but chemical—a leak of hydrofluoric acid, used in the enrichment process, could be harmful. To the millions of Americans whose communities depend on chemical/industrial plants, similar threats from chemical leaks are a remote risk they accept as a cost of industrialization.

The NRC staff found that the facility complied with all the relevant safety and environmental justice standards. The Environmental Protection Agency concurred, declaring that the plant's partners had demonstrated that "safety and environmental justice [have] been thoroughly considered and evaluated in the decision-making process." Most important, the technology had a proven safety record. Three identical plants—two of them located near large European cities—have been run flawlessly for 20 years by Urenco Ltd., a partner in the consortium behind the Louisiana project.

Undeterred, environmentalists pressed an environmental injustice claim with the Atomic Safety and Licensing Board, a panel of judges that reviews all NRC staff decisions. Tony Johnson, a Homer real estate agent and CANT organizer, says proving environmental injustice was always the opposition's goal. "We wanted the Claiborne plant to be our *Roe v. Wade*," he says.

While safety authorities were lining up behind the plant, environmentalists, with support from the National Association for

the Advancement of Colored People, were mobilizing local residents. Their targets were two black communities, Forest Grove and Center Springs, that border the plant's 440-acre site (the plant itself would occupy only 80 acres). Scattered across miles of wooded countryside, the 250 people in these spartan areas are connected by unpaved roads and two churches that share a minister. Some residents are hooked into the public water supply, but many still rely on wells. Activists won over these areas with a campaign of fear, warning that the plant would "blow up," sending an invisible killer, hydrofluoric acid, into their homes. Ground wells and soil would be poisoned by seeping radioactive waste. The people of Forest Grove and Center Springs were also told that this time bomb had been placed in their midst because they were black.

To address the concerns of Claiborne Parish residents, Louisiana Energy sponsored a visit to an enrichment plant Urenco Ltd. operates in Germany. The Claiborne residents also visited towns near the facility.

On May 3, 1997, the NRC licensing board gave activists the victory they had been seeking. In sending the plant's license back to the NRC staff for further study, the board agreed that minority populations would not be "disproportionately affected" by the project. But it said the "possibility that racial considerations played a part in site selection cannot be passed off as mere coincidence." To satisfy the tortured logic of Clinton's directive on environmental justice, the consortium would have to prove a negative—that it didn't locate the facility where it did because black people lived nearby. Environmentalists were ecstatic. Speaking to plant opponents, Sierra Club Legal Defense Fund lawyer Nathalie Walker declared: "You have all made history. This opinion says environmental justice is real."

At the time Clinton issued his directive, New York University Law School professor David Schoenbrod wrote that the "very existence of 'environmental injustice' is far from clear." In the case of the Claiborne plant, it is simply nonexistent. Company documents show the consortium picked Homer for a number of reasons, none of them racial.

The plant's Louisiana address satisfied a requirement that the site be in the service area of one of the consortium's electric utility partners: Louisiana Power & Light Co., Duke Power Co. (in North Carolina), and Northern States Power Co. (in Minnesota). The state had right-to-work laws and a supportive U.S. senator, Bennett Johnson, who could help shepherd the plant through Washington's regulatory maze. Northern Louisiana is one of the most stable seismic areas in the country, satisfying a need that the plant's high-speed centrifuges be located in "an area of minimal seismic activity" to ensure reliability. Northern Louisiana also is home to Interstate 20, which met the "transportation access" requirement. Because the plant needed hundreds of acres of buffer land, a rural location would keep property costs down.

And there was another reason: The Forest Grove area, like most of Claiborne Parish, had been declared an enterprise zone by the state of Louisiana. Enterprise zones are economic affirmative action programs, designed by states to attract industries to depressed areas. By locating in an enterprise zone, the Claiborne plant gets a 10-year exemption from county property taxes in return for hiring 35 percent of its work force locally. Louisiana made the Forest Grove and Center Springs areas enterprise zones because it wanted industry to locate near poor blacks, providing them with jobs and education opportunities.

"This is a poor area," explains Emma Hilliard, a black resident and former county representative for Forest Grove. "There are no jobs here. Most people have to work out of the county. My daughter, for example, commutes 50 miles every day to Shreveport to work in a casino." The Claiborne plant might give families like the Hilliards local industrial jobs. The federal government apparently prefers they staff distant gambling boats.

Enterprise zone aside, one need only listen to CANT activist Tony Johnson to understand the shallowness of the environmental racism charge. When asked if any white communities are affected by the plant, Johnson, who sells homes along Lake Claiborne just five miles south of the site, admits he is concerned "that my [white] lakefront estate clients would see their property values plummet." Why? Because, explains Johnson, "the plant's wastewater would irradiate the lake." This fear has no basis in fact: Treated after it's used as a cleaning agent, plant water contains 0.1 millirem a year of radioactivity, while the normal human dose of radioactivity from the earth alone is 360 millirems a year. More to the point, if CANT considers whites threatened, how is the plant's location discriminatory?

Activists are excited about the NRC board's decision because it sets a precedent not only for the nuclear industry but for the chemical industry as well. As the Sierra Club's Walker explains, "We see this [directive] being used to block any toxic waste facility that requires federal approval." She casts a wide net. In the United States, "toxic waste" industries are big employers. *Fortune* 500 behemoths like Monsanto and Union Carbide operate chemical plants that employ thousands of Americans, as do oil refineries, incinerators, and other facilities targeted by the environmentalists. The Claiborne plant precedent will discourage those industries from opening new plants. They will at least be located far from black neighborhoods, and therefore far from blacks seeking jobs. At worst, they will not be located in the United States at all.

In 1994, Prof. Schoenbrod worried that Clinton's order would "significantly delay many environmental decisions and increase the cost of agencies making them." The Claiborne case has proved him right. And it raises another concern expressed by the NRC board itself: Clinton's executive order demands that regulatory agencies such as the NRC pass civil rights judgments they are ill-equipped to make. "Because this agency's primary responsibilities historically have dealt with technical concerns, investigating whether racial discrimination played a part in a facility siting decision is far afield from the [NRC] staff's past activities," the board wrote. "Indeed...this is an area in which the staff has little experience or expertise."

It is fashionable to speak of racial unity these days, but in Claiborne Parish, the enrichment facility promised something real. Howard Gordon, a Presbyterian minister in Homer for many years, wrote the NRC in 1993: "Racial tension invades everything in the parish. It is a small parish with the traditional southern residential integration of big white homes, surrounded by small black homes....The presence of [the enrichment facility] is one of the best solutions to the hereditary racism of Claiborne Parish. The plant will increase the value of property around it and the parish as a whole [and] will allow the people to rise above the racist and provincial control of the past. Ecologically the plant is not a threat. Economically the plant is a tremendous asset. Societally the plant is a dramatic change for the better." Yet 200 miles away in Baton Rouge, NAACP State President Daniel Wilson organized a June 21 rally to celebrate the NRC board's decision. "We're glad at what happened in Homer," he crows.

In appealing the board's ruling on May 27 (the NRC staff has also appealed), Louisiana Energy Services President Roland Jensen said, "It is clear that the regulatory process is broken when seven years of 'streamlined' licensing [is] not sufficient to license a facility employing an advanced technology that has been used safely in three European countries." Citing Louisiana's efforts to attract the plant, Jensen concluded, "[L]eft standing, the decision is tantamount not only to canceling a project for cost-competitive enrichment services but also to further distancing low-income minority families from the mainstream of American commerce."

Emma Hilliard, one of many parish residents who accepted the consortium's invitation to visit Europe's enrichment facilities in 1990, was impressed by what she saw. "I spoke to people near the plant [in Gronau-Epe, Germany]," she says. "They were suspicious at first, but now they've seen how many jobs the plant brought. They are so glad it came." She is concerned that the Claiborne plant's troubles bode ill for her own county's economic future. "If the Claiborne plant goes down, what other company is going to try and locate here?" she asks. As the *Minden Press-Herald* in neighboring Webster Parish puts it, "We await the Sierra Club's $855 million job development plan for Claiborne Parish."

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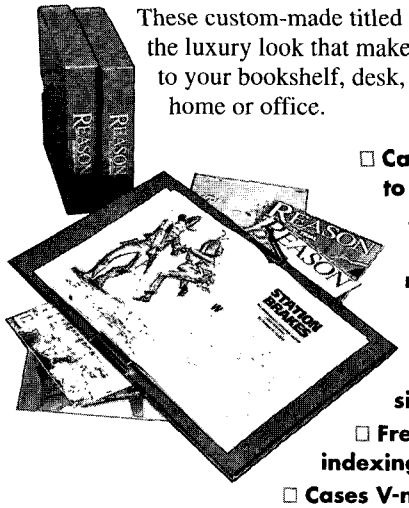

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Retro Style

Redefining yesterday's green light as red

By Walter Olson

I'm no fan of the Prohibitionists of yore, but they're starting to look better all the time. The Anti-Saloon League inveighed mightily against the "Rum Trust" of distillers and tavern keepers. But at least it didn't propose to jail these persons or seize their businesses as punishment for having enslaved drunkards for so long before the nation turned against boozing. Instead the 18th Amendment prohibited the sale of intoxicating liquors from a certain day forward, providing an orderly period of a year in which to convert distilling assets to other uses. The endeavor, in short, proceeded with a nod to the basic rule-of-law precept that, whatever government may choose to ban as a prospective matter, it may not punish people for behavior they engaged in before it got around to enacting its law.

Their moral successors today, the anti-tobacco crusaders, have fewer scruples. They could of course push Congress to pass a huge tax increase on cigarettes or an outright ban. But instead they cheerlead for lawyers seeking punitive damages against Philip Morris, RJR, Lorillard, and Brown & Williamson, for having sold and advertised cigarettes in past decades. And it seems to matter not a whit that in 1967, 1977, and 1987 the activity of selling and advertising cigarettes was thought by nearly all relevant authorities to be perfectly legal—or that to this day neither lawmakers nor courts have provided any clear sign that it's not still so.

The idea behind retroactive application of law is simple: Remember that green light you sped through 10 years ago? We've decided it should have been red. Law must be creative, must grow and change in response to social needs, and we've found ample reasons to revise our former policy on the sequencing of traffic signals. So here's your traffic ticket; make it payable to us, please.

Trial lawyers have made this technique work again and again in the vast expansion of liability law that started in the 1950s and continues to this day. When the process starts, Defendant D has for ages been thought to owe nothing to Plaintiff P. Then lawyers float creative theories that such liability would really serve the public interest, and they convince some court somewhere. Other courts follow, and before long defendants are paying not merely compensatory but even punitive damages for conduct that was considered lawful when they acted.

Sponsors of the Civil Rights Act of 1991 worked hard, though unsuccessfully, to get penalties enhanced for employer misdeeds that occurred before the law was passed.

Prosecutors use the same ploy. The Securities and Exchange Commission is notorious for pushing insider-trading law into novel areas by prosecuting persons whose conduct had previously not been thought covered by the law. Tellingly, in the 1980s, when defense lawyers pleaded with Congress to spell out which kinds of investment advice were lawful and which unlawful, the commission's staff actually opposed the idea.

Legislators join the game, too. In its Superfund law, Congress tagged any number of restaurants, auto repair shops, commercial painters, and dry cleaners with sky-high cleanup bills for the sin of long ago sending a few barrels of waste to a local disposal site in full accord with the law of the time. Sponsors of the Civil Rights Act of 1991 worked hard, though without ultimate success, to get penalties enhanced for employer misdeeds that occurred before the law was passed. New York retroactively yanked the right of small homeowners to move into areas of their homes that had been rented out to tenants even though some bought the homes on the understanding that they could do exactly that. Many states have reopened statutes of limitation after they have expired to allow trial lawyers to revive defunct but still lucrative injury claims.

Aren't the courts supposed to protect us from this sort of thing? In 1987, citing the Bill of Rights' ban on ex post facto laws, the Supreme Court struck down an attempt by Florida lawmakers to boost penalties retroactively for crimes already committed. But for reasons basically of historical accident, the Ex Post Facto Clause applies only to criminal and not to civil law. It was once widely accepted that the separate Due Process Clause provides defendants in civil cases as well with some protection from retroactive liability. Yet as Andrew Weiler points out in a 1993 note in the *Duke Law Journal*, today's Court virtually rubber-stamps retroactivity in economic legislation, reviewing such enactments under a standard so lax that it has struck down no such laws on due process grounds since the 1930s.

Even laxer—if possible—is the standard by which the Court approves retroactivity in tax cases. Thus in 1994 it unanimously OK'd the actions of Congress, which had knowingly created a tax incentive, then snatched it back after deciding it was being used too widely. (Rely on the government's promises, and get mousetrapped: In the case at hand a corporate taxpayer had entered a transaction in which it sustained a loss of $600,000, confident that by doing so it would qualify for the proffered tax benefit, which would have been worth more. When Congress reneged, it did not offer to repay the $600,000.) Another recent case allowed Congress, as a revenue-raising measure, to reach back four years to hike penalties for past tax violations. Opponents stood no

real chance of getting courts to block the decision of the Clinton administration, well into 1993, to raise taxes on higher-income individuals retroactive to the first of the year.

Until lately, a cigarette executive who visited a dozen lawyers at random would almost certainly have been assured his trade was a lawful one. *The Restatement (Second) of Torts*, put out in 1966 and still authoritative, specifically cites tobacco, along with whiskey and artery-clogging butter, as products that may harm the user but do not on that account expose the maker to liability: "Good tobacco is not unreasonably dangerous merely because the effects of smoking may be harmful."

Now, after a long and brilliant campaign, our easily led opinion leaders and editorialists are beginning to nod approvingly at the idea of using creative or stretched legal theories not only to confiscate tobacco companies' assets but to send the executives of those companies to prison. Should those executives land in that place, they might bring as reading material Hume's classic account in Volume V of his *History of England* of the trial of Strafford, a powerful official under Charles I who fell out of favor when the Parliamentary faction came to power. His enemies indicted Strafford for treason, against which there was an objection: His acts, though at times reprehensible and dangerous to the public liberty, did not seem to fall under the definition of treason then on the books; additionally, they were often similar to acts engaged in by his predecessors in public office. He was charged, for example, with issuing arbitrary orders on the supposed strength of royal prerogative and instigating a doubtful court-martial prosecution as a means of ousting a rival.

"Where is the mark set upon this crime? Where the token by which I should discover it?" asked the defendant, pointing out that hazards on the Thames were marked clearly with buoys, that vessels might steer clear. "It has lain concealed, under water." Strafford's other figure of speech was one of smoke: "Where has this fire been so long buried, during so many centuries, that no smoke should appear, till it burst out at once, to consume me and my children?" Better, he said, to "live under no law at all," and "conform ourselves the best we can, to the arbitrary will of a master, than fancy we have a law on which we can rely, and find at last, that this law shall inflict a punishment precedent to the promulgation, and try us by maxims unheard of till the very moment of the prosecution." Strafford's eloquence did him no good: Subjected to a bill of attainder by the vengeful Parliament, his head fell to the executioner's axe on May 12, 1641.

If today's litigation boosters are such fans of retroactive penalties, I think it only fair that they experience some of their own. Maybe we should give voters the right to turn state attorneys general out of their posts retroactively, voiding their actions in office and, not incidentally, their pensions: Call it retroactive term limits. Trial lawyers? A loser-pays rule is long overdue in this country anyway, and many propose that attorneys themselves be put on the hook for at least some of the costs they inflict on innocent opponents. I feel certain many such prevailing opponents would be willing to step forward and demand damages from lawyers who should not have sued them through the 1960s, 1970s, and 1980s.

Finally there are those awful, bossy public-health groups. I myself refuse to donate to the American Lung Association and American Heart Association, given their willingness to undermine public liberties in quest of their mandatory health goals. (I've been giving instead to the National Kidney Foundation, whose efforts on behalf of that unglamorous but vital organ do not, so far as I know, extend to lobbying for legally mandated bathroom breaks.) But nondonation on a prospective basis may no longer be enough. So maybe disillusioned freedom-minded donors deserve a legal right to a refund of money we've laid out on Easter Seals any time within the past 40 years.

Either that, or a simpler solution: Go back to the rule of law for everyone.

Contributing Editor Walter Olson (hambo @eci.com) is a senior fellow at the Manhattan Institute and author of the recently published The Excuse Factory: How Employment Law Is Paralyzing the American Workplace *(The Free Press).*

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Edifice Complex

By Rick Henderson

Major League Losers: The Real Cost of Sports and Who's Paying for It, by Mark S. Rosentraub, New York: Basic Books, 513 pages, $27.50

In October 1995, one of my childhood dreams came true. Thanks to a friend in the Indians' ticket office, I attended my first post-season baseball games: game five of the American League Championship Series, pitting the Seattle Mariners against the Indians; and game five of the World Series, with the Indians facing the team I've rooted for since 1969, the Atlanta Braves. I had the time of my life.

Both series were played in the one-year-old Jacobs Field, one of baseball's new showplaces, along with the Ballpark in Arlington (Texas), Coors Field in Denver, Turner Field in Atlanta, and the stadium that started the 1990s run of "new traditionalist" ballparks, Baltimore's Oriole Park at Camden Yards. These new retro stadiums mix features of the turn-of-the-century parks (asymmetrical field designs, exposed structures, seating close to the field) with high-tech luxury boxes, ubiquitous TV monitors, concession areas with full-service restaurants that overlook the action, expansive pedestrian walkways circling the field, and abundant, clean restrooms. A few purists may complain that the distractions these new structures offer divert attention from the action on the field, but the soaring attendance levels—last year the Indians became the first Major League Baseball franchise to sell every regular-season ticket before the season opened—suggest that most fans don't mind.

One thing clearly not old-fashioned about these new structures is their price tags: Jacobs Field cost more than $176 million. Indeed, Cleveland's Gateway complex—the downtown area which houses Jacobs Field, Gund Arena (home of the NBA Cavaliers), and the forthcoming stadium for the NFL Browns—may eventually cost $1 billion, much of the money coming from taxpayers. Had I known the magnitude of the subsidies at the time, I still would have enjoyed the games (especially since the Braves won the Series). But that knowledge might have tempered my euphoria just a tad.

Cleveland's Jacobs Field is part of the Gateway Complex, which may cost taxpayers there as much as $1 billion.

AP PHOTO / GARY GARDINER

The story of the fiscal nightmare known as Gateway is but one juicy nugget served up by Mark S. Rosentraub, associate dean of the School of Public and Environmental Affairs at Indiana University at Indianapolis, in *Major League Losers.* In meticulous detail, Rosentraub exposes what may be the most extravagant corporate welfare system in the United States today: the placement and maintenance of professional sports franchises. He marshals a dazzling array of statistics outlining the many ways well-heeled team owners, millionaire athletes, and headline-hungry politicians rip off taxpayers. And he offers somewhat useful policy prescriptions that might cut off the subsidy flow.

The cost of obtaining professional sports franchises (or keeping them in place) is skyrocketing. Before the Ballpark in Arlington was constructed, for instance, the estimated value of the Rangers franchise was $101 million, the 16th most valuable Major League Baseball team. After the new stadium opened in 1994—even though the Rangers had never played a postseason game—the team's value had jumped to $157 million, making it even more valuable than the storied Los Angeles Dodgers.

Politicians have an uncontrollable urge to throw taxpayer money at sports franchises. "At least five communities now provide or have proposed providing at least $250 million in subsidies for professional sports: Baltimore (and Maryland), Cincinnati, Cleveland, St. Louis (city and county partnership with the state of Missouri), and Nashville," Rosentraub writes. "Between eighteen and twenty-four state and local governments have provided or have proposed to provide at least $100 million in subsidies to professional sports teams, and several of these subsidies will

amount to almost $200 million." And this list did not include Raleigh, North Carolina, which will spend $120 million on an arena to house the NHL's former Hartford Whalers; nearby Alamance, Guilford, and Forsyth counties in North Carolina, which are battling to build a $210 million stadium that would house a Major League Baseball franchise which doesn't yet exist; and Minneapolis, where the Minnesota Twins are threatening to leave unless the city builds a $400 million, retractable-roof stadium, even though the Metrodome is only about 15 years old.

Franchise owners and their political allies often justify subsidies by crying poverty and by claiming that their teams have a major impact on the local economy. Teams are in fact doing quite well; the sweetheart deals owners have made with local officials, along with media revenue, contribute much to their success. In the 1994 and 1995 seasons, for instance, the Dallas Cowboys earned more than $75 million from ticket sales and luxury-seating revenue at Texas Stadium alone. The New York Yankees get more than $50 million a year from broadcast, cable, and other media sources. And in the 1994 season, the Indianapolis Colts reported the *lowest* media income of any NFL franchise—$37.2 million. At press time, Los Angeles Dodgers owner Peter O'Malley is negotiating the sale of his team to media mogul Rupert Murdoch, who may pay as much as $400 million for the Dodgers and Dodger Stadium. It's little wonder the potential owners of professional expansion teams must fork over upwards of $100 million in franchise fees to put an untested product on the field. Hardly the sign of a dying industry.

And sports franchises don't have a large impact on their local economies. Rosentraub uses U.S. Department of Commerce statistics to show that even in counties with the largest concentrations of jobs directly related to professional sports, the teams typically employ less than three-tenths of 1 percent of the local work force. All told, in counties with at least 300,000 residents, professional sports teams pay about one-tenth of 1 percent of total private-sector payrolls. As is often forgotten, sports constitute merely one form of entertainment competing against others. "A large proportion of the spending on sports, or that which results from sports," he says, "is merely a transfer of activity from one area to another. Sports are not only small potatoes, but those potatoes may have been someone else's before the team or stadium existed."

Despite its meticulous scholarship, or perhaps because of it, *Major League Losers* is a big disappointment. Rosentraub claims his objective is to help "end this perverse and unfair system [and unravel] the mystique of sports and their mythical benefits." To do that, his book needs to reach a broad audience and grab it by the throat, because the book challenges some of our most precious cultural myths, especially those revolving around the relationship between sports, economic development, and civic pride.

Franchise owners and their political allies often justify subsidies by crying poverty and by claiming that their teams have a major impact on the local economy. Teams are in fact doing quite well; the sweetheart deals owners have made with local officials, along with media revenue, contribute much to their success.

Unfortunately, the book reads like a tome on public finance or a series of case studies for a grad student seminar when it should instead portray the welfare queens of professional sports as the scoundrels they are. The information Rosentraub offers is useful and often sobering, but his presentation is dry as dust. To demystify the subject, he needs to tell stories, the lack of which is one of the biggest shortcomings of *Major League Losers.*

And what stories Rosentraub could tell! Think of the franchise owners: the Yankees' George Steinbrenner ("Costanza! Where's my calzone?"), the Braves' Ted Turner, the Cowboys' Jerry Jones, Jerry Reinsdorf (Chicago Bulls and White Sox), "toxic tort" lawyer Peter Angelos (Baltimore Orioles), even the Walt Disney Co. (Anaheim Angels and Mighty Ducks); the players: Michael Jordan, Dennis Rodman, Emmitt Smith, Michael Irvin, Ken Griffey Jr., Deion Sanders, Albert Belle; the politicians: New York Mayor Rudy Giuliani, Maryland Gov. Parris Glendening, Massachusetts Gov. Bill Weld, Indianapolis Mayor Steve Goldsmith, and Texas Gov. George W. Bush (part-owner of the Rangers). The personalities alone could offer plenty of riveting material.

Consider the book's chapter on Cleveland. The plight of the Browns dominated the 1995 NFL season. The team had played for 50 years to sellout crowds of more than 70,000 fans in "The Mistake by the Lake," aging Memorial Stadium. Then-Browns owner Art Modell made national headlines outside the sports pages when he pitted Cleveland against Baltimore for the privilege of housing his team. Modell threatened to move the Browns after the season unless Cleveland built a new facility, claiming that the lack of luxury boxes in Memorial Stadium kept him from making enough money to pay top salaries and attract the best players.

Modell overstated his "poverty": The NFL has done a great job of making it possible to profitably operate in smaller markets like Cleveland. It has in place a salary cap that limits each franchise's payroll. It also offers the most equitable media revenue-sharing package in professional sports. Since most teams get similar television revenue and pay comparable labor costs, for a popular team like the Browns that sells out all its games, luxury-seat revenue becomes clear profit for the owner. Baltimore, which had lost the Colts to Indianapolis a decade earlier, courted Modell by offering to let his team play rent-free in a new, $200 million football stadium near Camden Yards, financed by taxes on all Maryland residents.

A referendum was placed on the November ballot in Cleveland to raise $175 million through alcohol and tobacco taxes. But the day before the election—in the middle of the season—Modell signed a deal with Baltimore, and the Browns were a lame-duck franchise the rest of that year. In Baltimore they're now known as the Ravens.

The once-ubiquitous and much-be-

loved Modell faced death threats and had to go into hiding. He couldn't even attend home games after he decided to move the team. The "sin tax" initiative passed anyway; the money will pay for a new stadium to host a new franchise, also called the Browns, which the NFL says it will have in place by the end of the decade.

You can't make this stuff up. The story practically tells itself. Rosentraub instead focused on the financial package put together to build the Gateway complex, while noting Modell and the Browns only as an aside. This approach isn't likely to sell many books. And to get people upset enough about multi-millionaire moochers to demand that they start paying their own way, Rosentraub doesn't have to convince people like me, who already agree with him. He needs to win over sports fans and, more important, the beat writers, columnists, talk-show hosts, anchors, and essayists who can move audiences. He needs to convince George Will to write about these welfare queens in his syndicated column and use his platform on ABC's *This Week* to fume about them. He needs Dick Schaap to lambaste these freeloaders on *World News Sunday* or on ESPN's *Sports Reporters*. And from there, the Jay Lenos and David Lettermans could make the franchise owners, politicians, and even the more avaricious players national laughingstocks. But it's almost certain that Rosentraub's arid prose will turn off most readers soon after they crack the spine.

Among network journalists, to date, only ABC's John Stossel has used Rosentraub as a source for a major story. But this was for one segment of his prime-time special on freeloaders. And Stossel isn't a sports journalist. Until team owners who try to soak taxpayers become known as the enemies of their fans, rather than the saviors of their cities, they'll continue to get their bailouts. It will take more than the reams of information presented in *Major League Losers* to properly vilify them.

Rick Henderson (rhender555@aol.com) is managing editor of REASON.

A Thin Line Between Love and Hate

By John J. Pitney Jr.

Affairs of State: The Rise and Rejection of the Presidential Couple Since World War II, by Gil Troy, New York: The Free Press, 486 pages, $27.50

With Reverence and Contempt: How Americans Think About Their President, by Thomas S. Langston, Baltimore: Johns Hopkins University Press, 180 pages, $14.95 paper

A couple of years ago, a clinical psychologist published a damning analysis of Bill Clinton's personality titled *The Dysfunctional President*. Now that the Clinton scandal chart has grown more tangled than an Arkansas family tree, it's easy to see that many bad character traits took root in a place called Hope. But there is more to the dysfunction on Pennsylvania Avenue than one man's tarnished soul. According to books by historian Gil Troy and political scientist Thomas S. Langston, the American public has long had a troubled relationship with residents of the White House.

I use the word *residents* instead of *men* because Troy's *Affairs of State* concerns first couples, not just chief executives. Anyone seeking a collection of heartwarming anecdotes should look elsewhere: This book is serious political history with a tough-minded attitude. After examining presidential marriages from the Trumans to the Clintons, Troy reaches a dour conclusion: "The experience of the last half-century suggests that the First Lady has greater potential to hurt than help."

Any first lady must struggle with conflicting demands from the voters, who want her to have an active public role but don't want her to have any real power. Whatever course she takes, she will run into criticism. When Pat Nixon played it quiet, detractors mocked her as the passive "Plastic Pat." When Rosalynn Carter openly discussed policy issues, *Newsweek* asked whether "Lady Macbeth" lurked "beneath the soft voice."

Some first ladies have coped with the dilemma less adeptly than others, and Betty Ford gets a particularly harsh review. Noting that she wanted a salary for her duties, Troy observes: "If Betty Ford had received a salary, she would have been docked pay for dereliction of duties. Between her osteoarthritis, her chemotherapy regime, her periodic depressions, her daily tranquilizers, and her drinking, her aides never knew if the First Lady would show up to an event—or what her mood would be." Troy speculates that her liberal social attitudes may have cost President Ford the 1976 election. Here he uncharacteristically reaches too far. Mrs. Ford surely offended some Americans when she went on *60 Minutes* and made tolerant remarks about premarital sex. But her impact was trivial compared with the bad things that had happened during President Ford's tenure: the Nixon pardon, the 1974 recession, and the American defeat in Vietnam.

Troy is on firmer ground when he identifies another pitfall of first couplehood: People think poorly of presidents as spouses. George Bush, the joke went, reminded every woman of her first husband—and had Bob Dole won in 1996, he would have reminded every woman of her first husband's divorce lawyer. Nixon fared terribly on this point: "[W]hile his wife often made him look good, their marriage often made him look bad." With his aversion to public displays of affection, he often seemed to treat Pat with condescension or even coldness. This appearance had basis in fact. In planning his first trip to China, Nixon privately said that if Pat "goes, she goes solely as a prop."

It figures. Most presidents reach the White House only after many years of "public service," a euphemism for pursuit of power and position. In campaign after campaign, politicians learn to put their ambition ahead of everything else and to treat people around them, including their spouses, as "props." When scandal or defeat forces them from office, politicians claim they look forward to spending more time with their families. That's usually a

lie. If they really wanted to spend time with their families, they would not have entered politics in the first place.

Dwight Eisenhower was the lone "nonpolitician" among the postwar presidents, but even he does not come across as an inviting marriage partner. "Mamie, there's one thing you must understand," he told his wife early in his military career. "My country comes first and always will. You come second." No wonder she drank.

Despite all the problems surrounding presidential marriage, a number of chief executives have depended heavily on their wives, none more so than Bill Clinton. As Edith Efron pointed out in these pages nearly three years ago ("Can the President Think?," November 1994), Hillary has served as the first Vulcan, a cool, rational check on the president's undisciplined mental habits. "To an inordinate degree, Hillary Clinton *thinks* for Bill Clinton," Efron wrote. "Specifically, she is Bill Clinton's access to the laws of logic, without which no thinking is possible."

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This dependence has led to embarrassing consequences. "Hillary certainly was the leftist ideologue her conservative critics made her out to be," Troy says, so she was an odd choice to direct policy in a supposedly centrist administration. But Clinton could not do without her, so he put her in charge of his major domestic initiative, a "restructuring" of health care. The product was, of course, a disaster.

Just as important, however, the policy making process raised questions about the

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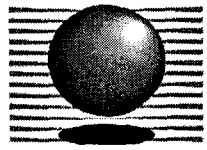

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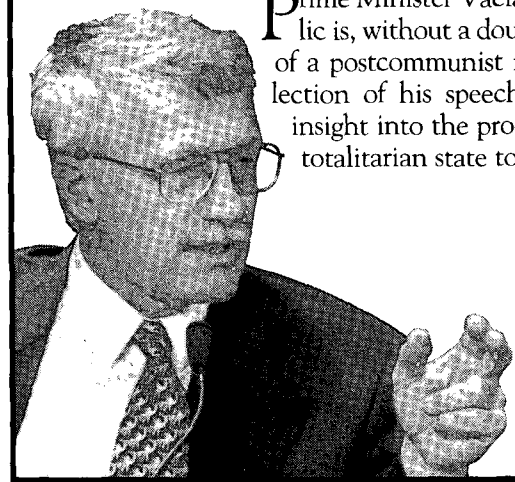

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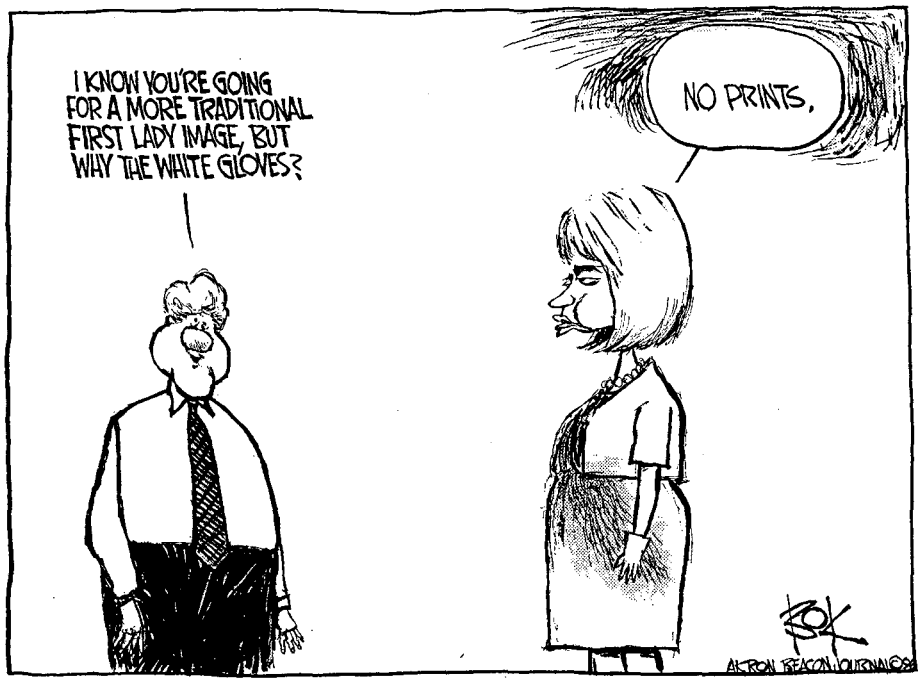
first lady's standing. Soon after she convened the health care task force, opponents sued. Since she was not a federal employee, they argued, the task force constituted a "federal advisory committee" that by law had to do its business in public. The Justice Department countered that she was the "functional equivalent of a federal employee." But when Republicans suggested that her health-related investments raised ethical questions, the White House counsel said she was exempt from the conflict-of-interest regulations covering federal employees.

This case suggests a larger point. It's wrong for the president to delegate real authority to a spouse, because power without accountability is dangerous. White House aides have to abide by a variety of statutes that sharply circumscribe their political activities (at least, that's the way it's supposed to work). Officials in the Cabinet and subcabinet have to account for their activities at congressional hearings, and the president himself has to answer to the voters. But the president's spouse is not subject to any such restraints. Indeed, courts cannot even compel husbands and wives to testify against each other in criminal trials, a bit of legal doctrine that may assume great importance in the next couple of years.

To remedy the mischiefs of White House marriage, Troy makes modest and pragmatic recommendations (e.g., "Support each other, rely on each other, but don't forget who's boss"). He assumes that the presidential spouse will be a woman, but a future edition of this solid book will undoubtedly have to address the status of a first gentleman.

Troy wisely recognizes the limitations of his subject matter. "The marriage tells us some things about the man and the president, but does not tell the whole story." For a broader (if less satisfying) view of the presidency, one may turn to Thomas S. Langston's *With Reverence and Contempt.* I opened the book with some hesitation, because its cover bears a blurb from the notorious Michael Lind (see "Power Puff," January 1997). Lind praises the book's "fascinating analysis," which is about as promising as William Shatner's lauding a fellow actor's "subtle and convincing performance."



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Nevertheless, the book is not terrible. It starts with the sensible argument that Americans have invested "too many meanings within our presidency." They want presidents to embody the nation and reflect its majesty, but they also want them to symbolize a commitment to democracy. Americans want great men and common men all at once.

They also want presidents to lead the "civil religion." Americans have long seen their country as a special place with a providential destiny, so presidents often describe the United States in spiritual terms, invoking God's blessings and praying for His guidance. While Langston broadly describes the intellectual and political difficulties of civil-religious leadership, he gives too little attention to the practical problems that such leadership entails. For one thing, there's a fine line between spirituality and sanctimony. Jimmy Carter crossed that line, which is one reason why people remember his presidency the way they remember a tedious sermon in a crowded church in the middle of August.

If a president wants to acquire an air of godliness by quoting the Bible, he'd better get it right. Langston cites a line from Clinton's 1992 acceptance speech: "Scripture says [that] our eyes have not yet seen, nor our ears heard, nor our minds imagined what we can build." Langston then moves on without noting something important: Clinton misquoted the verse. Says 1 Corinthians 2:9: "No eye has seen, no ear has heard, no mind has conceived what *God has prepared* for those who love him" By substituting earthly endeavor for divine providence, Clinton deeply offended fundamentalist Christians.

Langston also errs when he says that Reagan's employment of civil religion was relatively passive: "In the 1980s, there was no demon bank to be subdued, no Senate censure to condemn, no party to build from scratch." What about the Evil Empire? Significantly, Reagan introduced that term in a 1983 address to the National Association of Evangelicals. Reagan told the evangelicals that he hoped the Soviets would someday discover God. "But until they do, let us be aware that while they preach the supremacy of the state, declare its omnipotence over individual man, and predict its eventual domination of all peoples on the Earth, they are the focus of evil in the modern world." He urged them not "to ignore the facts of history and the aggressive impulses of an evil empire, to simply call the arms race a giant misunderstanding and thereby remove yourself from the struggle between right and wrong and good and evil." That speech was among the most significant and revealing of Reagan's career, and Langston's book suffers badly from neglecting it.

Reagan was trying to get the evangelicals to oppose the nuclear freeze, which

suggests another point that Langston misses. For decades, the danger of nuclear annihilation shaped the relationship of the people and the president. During the Cuban Missile Crisis of 1962, Americans prepared their fallout shelters, stocked up on canned goods, and came to grips with the idea that their world could burn up within a few hours. At the end of the crisis, many believed that John F. Kennedy's skillful leadership had literally saved their lives.

The commander-in-chief thus became the Man Who Kept the Missiles Away. Naturally enough, presidents exploited this stature to rally support for their foreign policy. They also used it to rationalize the growth of the national security apparatus and the invasion of civil liberties. Nixon even used it to justify the sacking of Watergate special prosecutor Archibald Cox. "Elliot," he told Attorney General Richardson, "Brezhnev wouldn't understand if I didn't fire Cox after all this."

In another way, however, the prospect of nuclear war made life tougher for presidents and presidential candidates. The chief executive could prevent a nuclear war, people realized, but he could also start one. Politicians and reporters thus gained an airtight reason for probing deeply into a would-be president's character. After all, anyone seeking the White House was asking for the power to kill every human being on earth. Any aspect of his public or private life that could hint at poor judgment was now fair game.

Not coincidentally, the first presidential campaign after the Cuban Missile Crisis featured vicious attacks on Barry Goldwater's stability. Four years later, Richard Nixon's campaign pamphlets said: "This time, vote like your whole world depended on it." In 1972, revelations of electroshock therapy instantly disqualified Sen. Thomas Eagleton as the Democratic vice presidential nominee. And in the following decades, a number of campaign commercials would feature the legendary "red phone" and the message that we needed a steady hand to answer it. As late as 1987, questions about judgment and character could still wreck a candidacy, as Gary Hart learned in the Donna Rice episode.

Bill Clinton, whose personality flaws were just as blatant as his unconcern for foreign policy, could probably not have won the White House during the Cold War. But by the time he geared up his 1992 presidential campaign, the perceived threat of nuclear war was fading, and people expected a good deal less from their president.

In evaluating the chief executive, perhaps we've gone too far in defining deviancy down. Even though we're not on the eve of destruction, a president can still do really bad things, such as collecting hundreds of confidential FBI files on political opponents. In this light, it's disturbing to read Gil Troy's description of how Bill and Hillary reacted to criticism: "The Clintons united in rage. Theirs was the angriest administration since Richard Nixon's."

It's tempting to stretch the Nixon analogy and start speculating about impeachment, but that's beside the point here. Regardless of who's president, abuse of authority will always be a danger as long as the federal government is too big, too complicated, and too intrusive. We should try to keep the power graspers out of the White House whenever we can, but above all we should drain the bureaucratic swamps that gave rise to Watergate and Indogate. The appropriate attitude toward the White House is neither reverence nor contempt, but watchfulness.

Contributing Editor John J. Pitney Jr. (jpitney@mckenna.edu) is associate professor of government at Claremont McKenna College.

Escape Mechanisms

By James V. DeLong

Locked in the Cabinet, by Robert B. Reich, New York: Alfred A. Knopf, 338 pages, $25.00.

This is an odd and irritating book. On the surface, it is a tale of an academic, author, and Friend of Bill of 25 years, reluctantly persuaded to become secretary of labor. His motives are pure: using power to help close the widening income gap between skilled and unskilled workers; to raise government investment in human capital by funding education and training; and, in general, to aid the people at the bottom of society.

As happens when the pure of heart meet the realities of power in D.C., the dream goes awry. Reich portrays himself as a naif about government who loses crucial battles to economic trolls worried about the budget deficit and inflation. He winds up so far out of the loop that he hangs out in the White House parking lot to beg scraps of information from passing officials. Final defeat comes at the hands of Dick Morris, who seduces a once-pure president into adopting the themes of the cold-hearted Republicans and focusing on the suburban vote while ignoring the economic anxieties of lower-class America. In the end, despite his love for the job, the protagonist is unwilling to sacrifice time with his family to carry the crushing workload of a cabinet officer and to engage in more losing battles, and he disembarks from the ship of state to return to academia.

The book is in the form of a journal, with entries for specific dates scattered throughout the four years of the first Clinton term. The entries grow steadily farther apart, and are pretty skimpy for

Robert Reich: If his political memoir reads like a work of fiction, well, it may be.

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1995 and 1996. Many bear the mark of heavy reworking in hindsight, making the book a fragmentary memoir illuminated by notes made at the time rather than a real diary.

The book is also redolent of literary forms beyond the memoir. It is a bit of a *Bildungsroman*, a somewhat sappy coming-of-age novel wherein a naive youth grows into an adult. Or it can be read as a picaresque novel, recounting the tale of a young, slightly roguish hero who goes out into the world, meets wonders and adventures, and makes faux-naive but actually shrewd comments on his experience.

The *roman à clef*, that form in which real events and people are fictionalized à la *Primary Colors*, also comes to mind. Lots of scores are settled. Lane Kirkland of the AFL-CIO comes through as burnt-out and inept, and a social snob to boot. Newt Gingrich has "the meanness of a nasty little kid." In fact, all Republicans are pretty rotten. Bridgestone Tire, which out-PRed Reich over an OSHA rule, is strung up to twist in a wind of corporation baiting and Japan bashing. Alan Greenspan is a bloodless gnome. The National Association of Manufacturers is a cigar-smoking lynch mob. Even grandees of the Democratic Party, such as Lloyd Bentsen and Robert Rubin, are spoofed for their hidalgo ways.

Clinton is treated with ambivalence, extending even to his name. He starts out as "Bill," but Reich soon describes a phone conversation in which he expresses discomfort over what to call his longtime friend. Instead of saying, "Call me Bill," Clinton says, "Yeah. It's strange, isn't it?" For the rest of the book, Reich refers to "B," since he lacks sanction to use "Bill" and somehow cannot make himself say "the president." (I have a hard time with this one myself, but my political situation is rather different.) The explanation for Clinton's failures to measure up to Reich's hopes is a standard one: The king has good instincts but is misled by his advisers.

Some come out all right. Ron Brown, it turns out, was really a champion of the nation's downtrodden all along. (So that's who went along on those foreign trips!) Hillary is treated with respectful sycophancy as she is persecuted unfairly for such things as her commodity trading. Reich, the corporate expert, seems unaware of something known to all financial experts, that her investment coup was simply not possible within the bounds of the trading rules.

There is another reason for likening the book to fictional forms: Much of it is not believable. I knew Reich 20 years ago in the Federal Trade Commission. He is an intelligent, able, sophisticated, and ambitious man. Exceedingly so, on all counts. He was politically active for the Democrats throughout the 1980s. Given this, the roster of improbable statements grows rapidly. His initial reluctance to come to Washington is dubious. The repeated claim of his own naiveté is laughable; Reich is about as naive as Machiavelli. Throughout the book, he puts little speeches explaining the realities of Washington and politics into the mouths of others while he sits and says, "Golly gee!" At one point he forgets, and within a few pages he puts identical words into the mouths of two different staffers, which gives you a pretty good fix on the name of the ventriloquist. He says, with no trace of a grin, that the AFL-CIO throws major resources into lobbying for an increase in the minimum wage because it is a big symbolic issue. Not a word about its effect in removing competition for union members from lower-skilled workers, while at the same time making the losers think you are helping them—a perfect two-fer of modern politics.

Robert Reich portrays himself as a naif about government who loses crucial battles to economic trolls worried about the budget deficit and inflation. He winds up so far out of the loop that he hangs out in the White House parking lot to beg scraps of information from passing officials.

Nor do I believe that Reich was humiliated at a Washington dinner party by reaching for the mint jelly at the wrong time. He makes much of his own plebian origins and even plebian behavior, but in fact he is safely on the sunny side of that chasm between rich and poor, with assets that put him comfortably in the millionaire class. When the government shuts down in late 1995, he talks of his pain in laying off 17,000 people and wondering if the Department of Labor will ever reopen. He must have been the only person in D.C. who did not know that the government employees would wind up with pay for their time off and an extra vacation. A lot of people got hurt by the shutdown, but not one of them was actually on the federal payroll.

It goes on. Most of the book is taken up with this sort of thing, stories of dubious authenticity and mild interest portraying Reich at less than full worth, or misleading you about government realities. (Indeed, writing in *Slate*, journalist Jonathan Rauch documented numerous fabrications among Reich's allegedly true accounts.)

Occasionally the real Reich, insightful and subtle, breaks loose, but only for a page or two at a time. A paragraph on spin, and on the way in which an effort not to spin is treated as particularly subtle spin, is amusing, true, and a perfect potential lead-in to a discussion of the press. A couple of pages on the multiple levels of the 1996 Democratic Convention come close to art, and could have paved the way for extended insights into the party. A page of musing on the true masters of each Cabinet department is shrewd and useful, as are a few paragraphs on the social incestuousness of the capital. References to bipartisan support for corporate welfare could serve as the springboard for a probe of this phenomenon. Each time, Reich quickly reins himself in and returns to froth and propaganda.

In the end, it is not the froth that is the most irritating, but the propaganda. The issues that worry Reich are real: the gaps between rich and poor, between skilled and unskilled; the proper role of government in education and training; the impact of the global economy; the nature of community and the meaning of the concept of a nation.

These are worth serious attention, and Reich is superbly equipped to deal with them. And he cops out, treating everything at a stunning level of triviality. Democrats, insofar as they want to spend money on

education and training, are good. Other Democrats need education. Republicans are evil, the tools of business, who enjoy grinding the workers and are blind or indifferent to the real forces at work. Reich's universe does not allow for the possibility that one could start with the same list of concerns and come to wildly different conclusions about the proper responses. He accepts as faith that federal "investment" in education and training will have a payoff. If you want to know whether past or current federal programs have been helpful or harmful, if you want to even think about the issue, do not look here. And do not look at other federal "investments," such as housing or business development.

Do you think there might be conflicts between the interests of unions and those of other workers, or that the growth of public-sector unionism is unsettling? Well, do not look here for illumination; these possibilities go unmentioned.

In bemoaning the chasm between rich and poor, Reich harps on high CEO salaries but ignores how rapidly corporate pay tails off below this level. He also avoids mentioning that many of the best-off people in America have their pay fixed by political means, or otherwise batten on government largess—civil servants, doctors, lawyers, foundation executives, and academics, for example. Could it be that the government is actually causing some of the disparity by subjecting the lower ranks to the market while insulating the rich? Or by sopping up investment funds? Or by a vast regulatory apparatus that raises the need for paper pushers? Don't ask Reich. But you can ask "B," who, as you will not learn in the book, looked out over a recent fundraiser of fat cats and joked about how many people have gotten so rich helping the poor.

The government described by Reich is also wildly incompetent at every level. A modest reform in the administration of unemployment compensation finally gets through, more or less by accident, but it takes 20 years. At one point Department of Labor regulators are hell-bent to zap a minor-league baseball team for child labor law violations because it used a bat boy. Reich stops this, but solely because of the bad press it generated for his department and without a thought that strict enforcement of the law is flawed in other, less eye-catching areas. The White House is a pediacracy, without structure or coherence, lurching from one position to another, consumed by politics, swallowed up by concern over the deficit and then by the values of Morrisism. The cynicism of the good Democrats in Congress is exceeded only by the cynicism of the bad Republicans.

Nonetheless, this is the government that Reich wants to endow with even more power to tax, micromanage, spend, and regulate. On the basis of the evidence he presents, you wonder how he avoids becoming a libertarian. He avoids it easily, though, largely by exhibiting the most irritating characteristic of modern liberalism—self-righteousness. He shows no awareness that any opponent could possibly be his moral equal, acting on principle. He jumps from facile analysis to policy prescription (more power and money for DOL programs), then elevates the conclusion into a moral imperative which automatically converts opposition into immorality.

In end, you are left with puzzles. If anyone is qualified to make a coherent case for liberalism, it is Reich. So why does he completely shun the attempt? Does he actually believe his own propaganda? Does he care about nothing but selling books, and political analysis does not sell these days? Does he find the degeneration of his party into a pirate band glued together solely by love of loot too awful to gaze upon?

Does he really think such a party will help the downtrodden? Why does he focus his animus on "business," ignoring other targets—does he think business people have a monopoly on avarice? Or that avarice for power is not as deadly a sin as avarice for money? If the propaganda portion of this book presents the best case that one of the ablest liberals can summon up, then the left is in sad shape indeed.

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Straight Shooters

By T. Markus Funk

The Great American Gun Debate, by Don B. Kates and Gary Kleck, San Francisco: Pacific Research Institute, 256 pages, $16.95

Gun control is one of those subjects on which virtually everyone has an opinion—usually strongly held. Whether pro– or anti–gun control, those opinions are often founded not on facts but on raw emotions fueled by widely publicized misinformation concerning gun use and misuse. Like few books before it, *The Great American Gun Debate: Essays on Firearms and Violence*, by Don B. Kates Jr. and Gary Kleck, pulls together the paramount sociological and criminological issues involved in this very public debate. The result is a readable, concise, and convincing argument that prohibiting civilian firearms possession is an ineffective—indeed, a counterproductive—means to deal with America's crime problem.

Although those who reflexively oppose any regulations on gun ownership may recoil at the authors' claim that "instant background checks, gun owner licensing, and permit-to-purchase systems seem preferable" to outright prohibition, the authors make an airtight case for the social utility of gun ownership. In fact, *The Great American Gun Debate* takes its analysis a step further by exploring a related—and under-examined—question: Why is there so large a gap between the media's pervasive harping on the unredeemed dangers of firearm ownership and the stream of recent scholarly studies demonstrating the benefits of civilian gun possession?

Kates is a San Francisco–based civil liberties lawyer and criminologist; Kleck is a criminology professor at Florida State University. They are among the most widely recognized and frequently cited experts on firearms issues. Kates authored a 1983 *Michigan Law Review* article, still the most widely cited treatment of the Second Amendment, that began the small flood of legal scholarship on the constitutional status of private firearms possession and use. Kleck wrote the authoritative *Point Blank* (1991) and has conducted research that has conclusively demonstrated the social benefits of civilian gun ownership.

Interestingly, the authors can't be easily categorized as libertarian or even conservative. In fact, both are rather "conventional" modern liberals, a predisposition they share with many other anti–gun-control scholars. This may surprise some readers, but it turns out that most academics who oppose gun prohibition are liberal, non-hunting civil libertarians who have no connection to, or interest in, the National Rifle Association and its legislative agenda. Kates and Kleck are quick to point out that this scholarly detachment and intellectual honesty stands in telling contrast to the results-oriented anti-gun research that inevitably dominates the headlines.

They also persuasively argue that legislation sought by the major anti-gun groups has nothing to do with "gun control," and everything to do with the ultimate objective of outright prohibition of guns in private hands (as prohibitionists Jim and Sarah Brady have put it, "no private citizen has any reason or need at any time to possess a gun"). The anti-gun lobby, contend Kates and Kleck, takes what it can where it can, saying whatever it must say to justify its claims. Kates and Kleck suggest that reasonable controls, such as preventing felons and the insane from possessing firearms, are both constitutional and criminologically sound in light of the current research. But, they maintain, outright prohibition of civilian firearm ownership is neither.

While the authors address some constitutional issues, the focus of *The Great American Gun Debate* is a utilitarian analysis of gun ownership and its effects on criminals and law-abiding citizens alike. This is a strategy that is well worth pursuing: As scholars such as Northwestern Law School's Daniel Polsby have emphasized, the social utility of handguns, not the Second Amendment, is what does and should concern the public most when it comes to gun laws. The authors do note, however, that the academic literature on the Second Amendment is so heavily weighted in favor of interpreting it as protecting the right of individual Americans to possess a firearm that this interpretation has come to be known as the "Standard Model."

The Great American Gun Debate examines the normative consequences of civilian firearms ownership in great depth and very convincing detail, provocatively starting with the idea that the state offers relatively little security to its citizens. (In fact, in 1989's *DeShaney v. Winnebago County Department of Social Services*, the Supreme Court held that the police have no affirmative obligation to provide protection, "even where such aid may be necessary to secure life, liberty, or property interests.") Fewer than 150,000 police officers are ever on duty at a given time in a country of over 3 million square miles and more than 260 million people. Estimates indicate that a 12-year-old child has an 83 percent chance of being the victim of a violent crime in his or her lifetime, but Department of Justice statistics reveal that for all crimes of violence, the police respond to 911 calls within five minutes only 28 percent of the time. Little wonder, then, that polls consistently show the public to have little confidence in the police's ability to protect them from criminals. Such a state of affairs is one reason why the National Association of Chiefs of Police, the American Federation of Police, and the National Police Officers Association of America all are on record as favoring civilian gun ownership.

The threat of victimization is the main reason that nearly 50 percent of American homes have guns, a fact that bothers criminals perhaps even more than it does media liberals. This may help explain why areas with high civilian firearm ownership have lower crime rates than areas where firearm ownership is less widespread.

The threat of victimization is also the main reason that nearly 50 percent of American homes have guns, a fact that bothers criminals perhaps even more than it does media liberals. Kates and Kleck recount a 1986 study in which sociologists Peter Rossi and James Wright interviewed 1,874 felons in 10 states. Rossi and Wright found that criminals are more concerned about encountering armed citizens than they are about running into police. The criminals' fear is well-founded: Although there are only about 1.7 million annual arrests for violent crime and burglary, Kleck estimates that there are at least 2.2 million defensive uses of a firearm by civilians each year (most involving incidents in which a gun is not actually fired). This may help explain why areas with high civilian firearm ownership have lower crime rates than areas where firearm ownership is less widespread.

But most media accounts of guns and gun violence either ignore or suppress these sorts of basic findings. And they're no better when it comes to gun-related accidents. Contrary to the media-generated perception that young children are dying every day as a result of firearm accidents, 1991 National Safety Council figures show that handgun accidents killed 10 to 15 children under the age of 6—roughly the same number poisoned after accidentally ingesting iron supplements. Consider that a child under the age of 6 is 25 times more likely to drown in an unattended swimming pool or bathtub than to be killed in a handgun accident.

Nor is it common for a gun-wielding civilian to shoot a family member or friend whom he mistakes for an intruder. Only about 2 percent of all fatal gun accidents involve this scenario—which means there is less than a 1-in-90,000 chance that a defensive use of a gun will result in this type of accident (the police, for their part, have an error rate roughly 11 times

higher). Similarly, one would never know from watching TV or reading newspapers that an offender manages to take a gun away from an armed victim only 1 percent of the time or less, or that shots are fired in fewer than 2 percent of all robberies during which a victim defends herself with a gun.

Kates and Kleck cast a glaring light on specific claims of gun-control proponents as well. For instance, Handgun Control Inc. suggests that the "best defense against injury [when attacked by a rapist, robber, or other felon] is to put up no defense—give them what they want or run." Such advice, regularly repeated in newspapers, ignores unambiguous criminological evidence showing that victims who submit to victimizers are injured twice as often as those who resist with a firearm.

Anti-gun advocates seem to have an equally shaky grasp of the types of people who engage in gun-related violence. For instance, according to a widely circulated pamphlet by the National Coalition to Ban Handguns (now going by the more innocuous name Coalition to Stop Gun Violence), "Most murders are committed by previously law abiding citizens." But as Kates and Kleck document, no evidence whatsoever supports such an outrageous misstatement. Indeed, study after study has established precisely the contrary: Murders are committed by people whose lives have been filled with violent and antisocial behavior. Murder is overwhelmingly a crime committed by individuals already living criminal lifestyles, and it is quite clear that law-abiding people are not magically transformed into killers by the mere presence of a firearm.

One study showed that roughly 90 percent of murderers have prior adult criminal records, with an average criminal career of six or more years that includes four major felony arrests. The typical "acquaintance homicide" occurs among rival gang members, drug dealers, or other organized crime figures. Even domestic homicides, which accounted for roughly 12 percent of all U.S. homicides in 1994, do not happen without warning. Ninety percent of the time, the police had been called to the residence at least once in the two years prior; in 54 percent of the cases they had been called five or more times.

Prohibitionists and their media allies consistently refuse to face this reality, stark as it is. For example, in the mid-1980s, when Florida was considering liberalizing its concealed-carry laws, newspapers were filled with editorial predictions that such changes would surely lead to the "Gunshine" State's streets running red with blood. In 1987, Gov. Bob Martinez signed a bill permitting citizens to carry concealed weapons if they passed a fingerprint-based background check and the required gun safety classes. The newspapers turned out to be wrong: Between October 1, 1987, and December 31, 1995, only five violent crimes involving permitted handguns were committed, and none of these resulted in fatalities. What is more, the FBI's *Uniform Crime Reports* shows that after Florida adopted its concealed weapons law, which resulted in roughly 300,000 issued permits by 1995, the handgun murder rate actually dropped by 27 percent.

Firearm statutes have long forbidden the possession of a gun by the relatively small group of aberrants most likely to commit violence (e.g., felons and the insane). With such restrictions in force, say Kates and Kleck, it makes no sense to disarm law-abiding citizens.

The question remains, however: If all the statistics support gun ownership as a social good, why is gun control—or even outright prohibition—still a popular cause? Kates and Kleck suggest that unsubstantiated claims about gun use, such as the oft-repeated and baseless factoid that guns are 43 times more likely to be used in a crime than for legitimate self-defense, have been so successfully incorporated into conventional wisdom that, to most citizens, the topic is not even worthy of debate. For many people, the "great American gun debate" is over and done with.

Ironically, say Kates and Kleck, such a reality is at least partly the gun lobby's own fault. "Until about the mid-1970s," they note, "academic writing about guns was virtually monopolized by crusaders seeking to validate their contempt and loathing for guns and gun owners. Neutral scholars eschewed the gun issue, and the gun lobby, though able to exert a great deal of pressure on the legislators, was incapable of, and uninterested in, addressing intellectually sophisticated audiences. But this intellectual default was a calamity for the gun lobby. It and its supporters may hold their views without feeling any need for factual or scholarly support; but the biased, problem-oriented pre-1976 literature indelibly shaped a conventional wisdom which many humane and responsible citizens who do not own guns embrace and which the popular media continue to dispense."

The result is that anti-gun stories circulate constantly in the media, with few plausible counterparts. Kates and Kleck do an impressive job of documenting pervasive media bias against guns and gun ownership. They discuss, for instance, a 1991

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study analyzing the content of national newspaper stories on gun issues which found that, of the 71 percent containing net bias in one direction or another, 81 percent were biased in favor of gun control. However, say Kates and Kleck, the media's unfriendliness to gun rights doesn't represent the sort of organized campaign to misinform the public that many gun rights advocates envision. Rather, evidence of the benefits of gun ownership does not "fit into [most reporters'] general world view as it pertains to guns and gun control." By and large, the authors suggest, journalists are unfamiliar with firearms and the criminological studies examining their use and abuse. Hence, journalists are more likely to buy uncritically the arguments of media-savvy, and ideologically sympathetic, gun control advocates.

Although the authors cite the "unequal character of the propaganda struggle over firearms," they seem not to have specific suggestions concerning what anti-prohibitionists must do to correct biased reporting. Similarly, the authors' attack on the public health literature—their nearest approach to intemperance in this book—suggests no corrective for the stream of what they see as results-oriented pseudoscience put out by, among others, the Centers for Disease Control and Prevention's National Center on Injury Prevention and Control. (See "Public Health Pot Shots," April 1997.) But reform is not, after all, the theme of *The Great American Gun Debate.* Accurate description is.

Yet there is a perceptible, if gradual, shift occurring, at least in certain intellectual circles. Although recent scholarship demonstrating the benefits of gun ownership has yet to convert many mainstream journalists (who typically are not sophisticated consumers of criminological studies), such work has had a rather dramatic effect on those professional skeptics who make their living analyzing, criticizing, and proposing legislative responses to contemporary legal problems. A survey of the relevant literature reveals numerous scholars who, like the author of this review, concede in published articles that they entered the debate believing that the Second Amendment protects only firearms possessed by members of the National Guard or some similar official group, and that civilian firearms possession was an odious evil that should be eliminated.

After examining the competing constitutional and criminological arguments and studies more closely, however, more and more scholars are being persuaded by the anti-prohibition and pro–individual rights arguments, and are ultimately disavowing their prior views. Tellingly, as far as I can determine, not a single scholar who has written in favor of strict gun controls has similarly attested to being converted from a previously anti-prohibition position. This fact, in and of itself, may not establish the intellectual honesty of those "converted" academics who now oppose gun prohibition, but it does suggest that the argument for gun prohibition rests on shaky intellectual ground. It also seems quite plausible that, just as academics in the late 1960s and '70s helped create an anti-gun mindset, today's growing anti-prohibition scholarship may set the stage for a broad-based change in attitude toward gun ownership.

Whether a wholesale revision of attitudes toward guns is in the offing, at least this much is certain: For those already skeptical of prohibitions aimed at civilian firearm possession, *The Great American Gun Debate* will gratify by providing the sort of well-reasoned arguments and solid data that were previously available only by meticulously wading through volumes of dry academic journals. Perhaps more important (and impressive), for those who view gun prohibition as a welcome response to armed criminal violence, Kates and Kleck will challenge at every turn bedrock assumptions about the nature and impact of gun ownership. Indeed, some open minds may even be changed.

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Riding the Wave

By Gregory Clark

The Great Wave: Price Revolutions and the Rhythm of History, by David Hackett Fischer, New York: Oxford University Press, 536 pages, $27.00

If Alan Greenspan has not already got a copy of this book by his bedside, then Oxford University Press ought to send it to him as a belated wedding present. Greenspan has been condemned by such advocates of organized labor as Robert Reich for his monomaniacal devotion to controlling inflation at the expense of all other social goals. Others have derided his job, with its tight-lipped incremental squeezing and relaxing of the federal funds rates—now up a quarter of a point, now down a quarter of a point—as the most boring in the world (suggesting such jokes as, "Can Alan Greenspan be cloned? Depends on if you need living tissue."). Yet here comes David Hackett Fischer, a history professor at Brandeis University, to claim through a study of eight centuries of world price history that not only is inflation undesirable, it is the mother of all evils, including falling real wages, inequality, fiscal crises, crime, marital disharmony, revolution, and war. Greenspan is thus on the front lines in the struggle for civilization.

The only discomforting thing for our Federal Reserve chairman in Fischer's analysis is the conclusion that inflationary pressures themselves are merely the visible sign of a deeper social cycle. Hence, if Greenspan does succeed in reducing inflation to zero, it will not be the result of his personal magnetism, but simply a sign that the current inflationary cycle has run its course, and inevitably a happy age of price stability is to follow. Greenspan is thus a mere cog, if a well-oiled and comfortably positioned cog, in a larger social machine, whose eternal cycles of inflation and stability can be traced back at least as early as the 13th century.

Fischer argues that the world has seen four great waves of inflation and stability

since 1200. Each of these waves began with a long inflation—the Medieval Price Revolution (1200–1320), the 16th Century Price Revolution (1520–1620), the 18th Century Price Revolution (1720–1820), and the 20th Century Price Revolution (1896–1997)—followed by long periods of price stability. In each price revolution, population grew and real wages fell, while returns on capital and land ownership rose and such measures of social discord as crime and illegitimacy increased. Governments saw increasing fiscal crises, and revolution and war became more prevalent. In the succeeding periods of stability, real wages rose, returns on land and capital fell, and social, fiscal, and political harmony were restored.

The fundamental cause of these cycles, Fischer argues, is people's expectations. In the good times of price stability, confidence rises. People marry early and reproduce often. This increases the labor supply, reducing real wages and driving up the returns on the scarce factors, capital and land. Similarly, in the period of optimism people expand the scope of their economic activity. The result is "that aggregate demand grows more rapidly than supply. As it does so, the general price level begins to rise." As inflation gets sufficient momentum to become visible to all, and as real wages fall, individuals and institutions respond in ways that generally induce more inflation. "The stock of money is deliberately enlarged to meet growing demand. Capitalists charge higher rates. Landlords raise the rent. Real wages fall further behind."

As inequality increases, this creates "a problem of poverty and homelessness," putting a strain on social relationships and intensifying class conflicts. As social cohesion disappears, individuals try to improve their own welfare by making more claims on the state while reducing the taxes they pay. Fiscal crises result. Despair and pessimism spread. Markets become unstable; production and productivity stagnate so that stagflation ensues. In short order, drugs, drink, and sexual infidelity abound.

Surveying the social wreckage that the inflation has begotten, people lose the reckless optimism that engendered the whole wretched excess. Pessimistic, people delay marriage and reproduction, reducing the labor supply, driving up wages and reducing land rents.

Inequality declines, and social solidarity is rebuilt. States can finance themselves as the demands on state benefits fall, and the resistance of taxpayers declines. Domestic harmony begets domestic harmony, as the marital bed regains its former sanctity, and bastardy and license lose their grip on society. But before long confidence once again rears its ugly head, and the relentless inflationary cycle is off again.

This précis of Fischer's central thesis, accurate though it is, will, I am afraid, lead most readers to think that Fischer is the kind of cranky Uncle Norman whose theories we have all had to endure through long wedding dinners. They will be asking themselves how the once-proud Oxford

The problem with David Hackett Fischer's analysis is that he gets carried away by his rhetoric from modest questions about the nature of inflation into wacky world-historical rantings. He is well-respected as a cultural historian, but economics as a systematic field of inquiry is new to him, and it shows.

University Press could have been reduced to publishing Uncle Norman. Yet while about a fifth of the book is the work of Uncle Norman, the bulk is a carefully wrought work of historical scholarship, where the individual components are generally interesting and informative. Indeed, the scholarship is so careful that much of the intended audience may be lost because of that very care. Though the book is 536 pages, the text occupies only 258 pages—less than half. One hundred and three pages are taken up by appendices detailing such arcane issues as "Price Revolutions in the Ancient World" and "Moneys of Exchange and Moneys of Account" and documenting sources, and 139 pages are consumed by a comprehensive bibliography of all significant works on price history on all continents.

The problem with Fischer's sweeping analysis is that he gets carried away by his

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own rhetoric from modest questions about the nature of inflation into wacky world-historical rantings. He is well-respected as a cultural historian, but economics as a systematic field of inquiry is new to him, and it shows. He conflates different types of inflation which have fundamentally different sources. And when this produces predictions that just will not square with the data, he happily acknowledges the exceptions and moves on to proclaim the success of the grand theory.

Inflation that results from a decline in the price of precious metals relative to such commodities as wheat is different from that resulting from government currency debasement.

What do we mean by inflation? In ordinary language, inflation is an increase of prices measured in the unit of account. In the case of England, the pound has been a unit of account since the Middle Ages. Initially, one pound sterling was equivalent to a pound of silver and was composed of 240 pennies. But over time monarchs periodically debased the currency by making coins of the same denomination with less silver content. In 1464, a penny had only about half as much silver as a penny contained before 1334. Thus, as long as money was defined as a specified weight of metal (which it was until quite recently), inflation could have two quite distinct sources. The first is a decline in the price of precious metals relative to the value of other goods such as wheat, which would be common to all countries and out of the control of any government. The second is a decline in the metal content of the unit of account, which was under the control of individual governments and could vary from country to country. In recent years, as "money" became nothing more than paper whose value is defined by fiat, debasement became the only source of inflation.

Thus inflation of the type that has bedeviled the West since 1970 has been driven purely by debasement. In contrast, the three major inflations of the pre-industrial period were primarily of the first type and had little to do with government policy.

Fischer wants to lump these two very different phenomena together and explain them through exactly the same mechanism. But this is absurd. Since modern inflation depends crucially on government policy, it is quite plausible that it can have a social explanation, and thus some of Fischer's ideas may have purchase here. There is a remarkable commonality in the inflation experience of developed countries, for example, in the years since 1970. In the 1970s significant inflation appeared in almost all these nations, and in the 1990s inflation is moderating in the same group of countries. Yet since the 1970s we have experienced an era of floating currencies, so that inflation rates need not be linked across national boundaries. And it is remarkable that we are currently able to maintain nearly full employment in the United States at low inflation rates, when in the late 1970s full employment was only possible with ever-rising rates of inflation.

It is also interesting that while the OECD nations have an average inflation rate of less than 2 percent, inflation is roaring at full tilt in many poorer countries. Prices have increased in the last year by 77 percent in Turkey, 74 percent in Venezuela, 24 percent in Mexico, 11 percent in India, 10 percent in South Africa, and 8 percent in Brazil. Most of these high inflation countries face significant social or political disruption. It is also interesting that just as inflationary pressures seem to be easing in the United States, crime rates have fallen with a rapidity completely unpredicted by criminologists. And as Fischer shows, the era of rising crime in the United States was also the era of increasing inflation.

But there is absolutely no reason to expect that the interesting social correlates of modern inflation will be found when we look at inflation generated by completely different means in the pre-industrial past. For a start, the rates of inflation then were trivial by modern standards, being typically only 1 percent to 3 percent a year. If European societies were going to experience major social disruptions at such inflation rates, then why has the current U.S. inflation rate of 2.8 percent not produced at least a few more signs of the concomitant social despair? If Fischer is correct, I would expect to see at least a few dead lying unburied in the streets.

Fischer would be forced to give up on his theory if he constrained his empirical testing in a more rigorous way. A key plank of his theory, for example, is the link between the growth rate of population and inflation rates. After 1820 the connection between population growth rates and inflation breaks down completely. The late 19th century saw rapid population growth across most of Europe and in the United States, but it also saw persistent deflation, in stark contradiction to the Fischer theory.

What is his response? He prints a diagram showing that in England the growth rate of population is connected with the level of prices. It is a subtle shift, but it completely changes the theory. When we get to the 20th century, Fischer settles on a diagram showing world population and U.S. prices between 1890 and 1990, where we get a nice correlation. Why have we suddenly shifted to world population? We have to do that because, despite the increase in inflation in most of Western Europe after 1970, population growth rates have fallen dramatically. Thus, the same diagram showing prices vs. population for any country in Western Europe for 1890 to 1990, or even for the United States, would show, if anything, an inverse connection between the growth of population and the growth of prices. With techniques such as these you can find empirical confirmation for any theory you want.

Similarly, Fischer's theory demands that inflation be associated with rising inequality. Yet he finds rising inequality in Florence in the period of price stability between 1330 and 1427, and falling inequal-

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ity in the United States in the inflationary years 1910–1970. Wages always fall in inflations, except for the years 1946–1970. For each of Fischer's laws of inflation, many exceptions can be found and are evident in his own text.

This book seems designed to appeal to a broad audience. There are nicely illustrated maps of Europe in various epochs, and each of the chapters opens with a somewhat forced colorful vignette, from a festival day in Chartres 1224 to the Diamond Jubilee Day of Queen Victoria in 1897. Unfortunately, I can only recommend it to those sophisticated enough about economics to ignore most of the text and instead explore the very useful footnotes and appendices. Unless, that is, you are looking for a present for a favorite uncle with a penchant for strange theories, and you are expecting no imminent nuptials in your family.

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Inspecting the Inspectors

By Robert W. Poole Jr.

Flying Blind, Flying Safe, by Mary Schiavo, New York: Avon Books, 373 pages, $25.00

If you've been paying any attention to airline safety during the past year, you could hardly have missed Mary Schiavo. The controversial former inspector general of the U.S. Department of Transportation was a frequent guest on TV talk shows in the wake of the ValuJet and TWA crashes, and advance publicity for her book this spring included a major segment on *60 Minutes* and extensive excerpts in *Time*.

To some, Mary Schiavo is a courageous bureaucracy fighter who has finally told the public the truth about the incompetence of the Federal Aviation Administration. To others, including many aviation veterans, she is a "loose cannon." The truth is that she's some of each. Which makes her book, *Flying Blind, Flying Safe*, both valuable and frustrating.

Only an outsider-insider like Schiavo could provide ordinary people with authentic accounts of how badly off-track the FAA has gotten in its job of looking after aviation safety. As both a private pilot and a powerful Transportation Department bureaucrat armed with subpoena power, she knew enough to ask the questions that needed to be asked and to find the skeletons in the FAA's closet. But as a woman and a nonmember of the old boys' network of retired generals and admirals who circulate in the FAA's upper echelons, she was able to bring a fresh perspective to this troubled agency.

Thus, this is the first popular book to lift the veil and show air travelers how the FAA really operates. Schiavo shows the

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—Ayn Rand, *Atlas Shrugged*

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agency's corporate culture in action—starting with the administrator's butler, ceremonial office, and unlimited access to cockpit time in the agency's huge fleet of planes. More substantive are her accounts of Inspector General's Office investigations of such safety issues as shoddy FAA inspection practices and the use of "bogus" aircraft parts (parts not made by approved vendors and possibly made of inadequate materials). She provides chilling evidence of an agency whose people all too often simply go through the motions of regulating, but whose overriding concern appears to be throwing a comforting security blanket over air travelers.

Mary Schiavo: She is right to argue that the FAA's air traffic control system is a high-tech business which should be converted to an independent corporation.

Noting the very small number of violations turned up by FAA inspectors (less than 0.5 percent of inspections identified a violation), Schiavo learned that it was routine for the inspectors to call the inspectees in advance to let them know when they were coming. By contrast, special inspections, which used inspectors from other FAA regions, generally turned up far more violations. A number of General Accounting Office reports had criticized FAA inspection practices, but nothing had been done to change things.

That leads to another virtue of Schiavo's account: her exposure of the game playing that goes on in the name of congressional "oversight." She recounts several heartbreaking experiences of sharing in advance the details of I.G. investigations with leading House Aviation Subcommittee members, only to be sandbagged at the subsequent hearing by a senior FAA official who'd obviously been tipped off about the findings so he could prepare an obfuscating response. She also recounts grandstanding over FAA issues by members of Congress who had done nothing (and intended to do nothing) to solve the problem.

Schiavo provides a detailed account of the I.G. investigation into the FAA's squandering of $1.6 million to force more than 4,000 senior managers to endure New Age training seminars run by a devotee of a cult-like guru and spiritual "channeler." The seminar manager was ultimately jailed for fraudulent billing, but the responsible FAA managers were given a slap on the wrist.

The book also includes seven chapters of practical safety advice to air travelers, presenting hitherto unavailable information on the relative safety records of specific airlines and types of planes, and generally useful (though overly conservative) advice on minimizing your risks when flying on airlines and using airports. For example, many aircraft accidents are survivable if you can get out quickly, before smoke and fumes kill you. Reserve an aisle seat, as close to an exit as possible—and, if possible, ask at the airport to be moved to an exit row seat.

If the book simply stopped there, Schiavo would have done a great public service. Unfortunately, she goes on to offer well-meaning but dangerous policy advice. Her fundamental mistake is to argue that the FAA should pursue safety literally at all cost. Again and again she castigates the agency for attempting to weigh the possible benefits of proposed safety regulations against the cost they would impose on aircraft makers, airlines, and the traveling public. As she puts it baldly, "The truth is, no one needs government officials to put a dollar value on his or her life, or on the lives of loved ones. We consider ourselves priceless. So should the FAA."

In fact, there's solid economic research showing that most people do not put an infinite value on their lives. Harvard economist W. Kip Viscusi, for example, has shown repeatedly that people will accept risky occupations in exchange for higher pay, putting an implicit value on their lives. Such research has produced a range of values with a midpoint of about $5 million. Yet the plethora of new safety and security procedures recommended by the Gore Commission after the crash of TWA Flight 800 would cost more than $200 million for every life saved, according to estimates by Robert Hahn of the American Enterprise Institute. Safety at all cost is a recipe for national impoverishment.

Furthermore, in some cases regulations intended to save lives can end up actually costing lives. Consider the question of whether airlines should be forced to require that parents put infants in separate child-restraint seats rather than carry them on their laps. The FAA's analysis showed that, by forcing parents traveling with babies to buy another ticket, such a rule would impose an additional $1 billion in airfare expenses on families over a 10-year period. Because of the additional cost, 20 percent of the families would shift to driving, and because of the higher death rate associated with driving, there would be a net increase of 82 infant and adult fatalities over a 10-year period—as a predictable result of imposing this "safety" mandate. But Schiavo, like Ralph Nader, just can't abide this kind of analysis. She would impose any regulation that promises to improve air safety in the smallest degree, regardless of the ultimate cost.

This kind of naiveté about the real world undermines Schiavo's credibility as a reformer. So do the book's factual errors about aviation—misidentifying the SR-71 Blackbird as the SR-171 (no such plane exists), calling Frank Whittle the inventor of *rocket* (rather than jet) propulsion, calling the Air Transport Association the *Airline* Transport Association, and so on. These sloppy mistakes give aviation insiders grounds for attacking Schiavo's claim to be knowledgeable enough about aviation to be a reliable critic of FAA mismanagement.

Even worse, Schiavo confuses two aviation funding mechanisms: 1) the 10 per-

AP PHOTO / JOE MARQUETTE

cent airline ticket tax, which is sent to Washington as the main source of funding for the FAA's air traffic control and airport grant programs and 2) the $3.00 passenger facility charge, which airports are allowed to impose to fund local improvements. Her entire Chapter 6 is thus a hopelessly confused mishmash which does more to mislead than enlighten the reader.

So what should be done about aviation safety? Schiavo is right to argue that the FAA's air traffic control system, which accounts for more than two-thirds of its budget and staff, is essentially a high-tech business which should be converted to an independent corporation. That would leave the remaining FAA free to focus on becoming a better safety regulator.

Mary Schiavo's book includes seven chapters of practical safety advice to air travelers. For example, many aircraft accidents are survivable if you can get out quickly, before smoke and fumes kill you. Reserve an aisle seat, as close to an exit as possible—and, if possible, ask at the airport to be moved to an exit row seat.

Doing so would require a major overhaul of its corporate culture—but not by throwing out the government-wide requirement for cost-benefit analysis of proposed regulations, as Schiavo proposes. A new layer of top management, recruited from outside the old boys' network, would help, but a fundamental problem would remain. For the FAA has always seen a major part of its job as reassuring the public that all airlines are equally safe, and much of its corporate culture has evolved in response to that premise.

In fact, as Schiavo makes clear, that is not and never has been the case. The major airlines and manufacturers have a powerful self-interest in operating and building safe planes. She recounts how the technical features of the Boeing 777 and McDonnell Douglas MD-11 were beyond the expertise of FAA's certification people; Boeing and M.D. essentially regulated and certified these new planes themselves. As Schiavo notes, "safety may be more important to Boeing than to the FAA or any other government agency....Boeing would destroy its credibility...if it allowed poorly designed planes to leave its hangars." And product liability lawyers would have a field day.

But, contrary to naive free market theorizing, there are parts manufacturers and less reputable airlines out there, willing to spend less on safety and take the chance that they will be able to either beat the odds or somehow escape liability. Consider the comparative 1991–95 accident and incident rates Schiavo cites in Chapter 13. American, Delta, and United had rates of 5.9, 6.3, and 4.7 accidents and incidents per 100,000 takeoffs, respectively, while much criticized ValuJet was only slightly higher at 7.1. Then look at the 15.7 for Arrow Air, 48.9 for Tower Air, 52.9 for Rich International, and 109.4 for Miami Air. Yet the FAA security-blanket approach tells travelers that if an airline meets its minimum standards, it is "safe." Full disclosure of this kind of safety information—as Schiavo recommends and the FAA has now begun to do on the Internet (http://nasdac.faa.gov/internet/)—would permit air travelers to weigh the trade-offs between lower fares and safety levels for themselves.

But what's really needed is a different approach to safety regulation altogether, one that aligns incentives with the desired results. If the regulator's own funds were at risk when safety was neglected, there would be much stronger incentives for both sensible (i.e., cost-effective) regulations and effective enforcement. That's why, after the next several attempts to reform the FAA end in failure, this vital task should be delegated to an arm of the insurance industry. With their own funds at risk, the insurance companies would have a powerful incentive to do the right thing. ®

Reason Foundation President Robert W. Poole Jr. (bobp@reason.org) has been researching FAA reform since 1977 and has testified on the subject before congressional committees.

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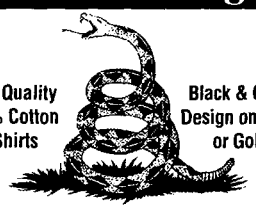

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Cash Money

How consumer activists sabotage ATM customers

By Thomas W. Hazlett

The California legislature has been devoting much of its 1997 deliberations to an issue of vital importance to the health of our republic: whether laws are needed to stop banks from gouging customers for cash withdrawals at automatic teller machines.

It turns out that when your bank provides you a service, like making cash available to you in some remote location at 3 a.m., they sometimes charge a fee. These charges can run all the way up to $1.50 for delivering up to $300 in fresh bills. That is an outrage. It's *your money*, and you should be able to pop it into your wallet wherever and whenever you want, at face value. Some legislators are incensed and, taking their cue from the watchdogs of the public interest at Consumers Union, are attempting to make ATM fees illegal.

This episode speaks volumes about the manner in which politicians and "public interest" operatives package the case for government regulation. That brief typically consists of two parts: 1) An unconscionable ripoff is being perpetrated by a gang of avaricious thugs in the unregulated marketplace. 2) The government must pass a law to rein in these villains.

No fuss, no muss, no intellectual heavy lifting. Lawlessness has permitted evil men to perpetrate crimes, and a bureaucrat must be deputized. Regulation is as easy as dialing 911.

And yet somehow they keep getting a wrong number. Perhaps their circuits are crossed. Let's check that listing.

The economics of ATM fees are not rocket science. In short, banks charge fees (both implicit and explicit) for providing financial services. One such service is safeguarding one's liquid assets (often in an interest-bearing account) and then making them available on demand. Until just a few Super Bowl blowouts ago, the customer was forced to cash his chips by locating a branch of his bank, motoring there, queueing up, and dealing with a bank teller sporting a "Have a Nice Day" lapel pin. Such negotiations, of course, could be conducted only during "banker's hours." Come 3 p.m., and *your money* was locked up for the night.

Now, thanks to a modicum of deregulation-induced competition and a hearty push from the miracles bubbling up in the laissez-faire computer technology sector, ready-teller machines make one's cash reserves safely available 'round the clock, 'round the world. Your mad money is accessible to you at every store, bar, restaurant, bus depot, shopping mall, airport terminal, casino, hotel, and major intersection in Christendom or the Orient. You can get at your cash day or night, Tuesday or Sunday, in the United States or South Africa. And not once must you say, "You have a nice day, too."

ATMs are so ubiquitous and easy to use that we tend to take them for granted. But while such convenience is provided remarkably efficiently, it is not done for free. The brutal fact is that maintaining machines and juggling cash balances costs cash money, particularly when a customer ventures out and uses the services of a machine operated by a bank where he does not maintain an account. Papers will have to be shuffled; competitive wages will have to be paid.

If this transaction costs the bank a dollar to process, the customer who inspires the shuffle may be offended at being charged for a service he considered fee-free. Fine. Let's pass a constitutional amendment giving every American the right to zero-priced cash withdrawals. A victory for the consumer?

This is where the real bunko artists step in. The Consumers Union purports to champion the customer's interest; instead, it succeeds only in burying fees across a range of banking services. While the government may make the $1.00 fee go away, the buck doesn't stop there: The government cannot make the associated costs go away.

A rule that suppresses upfront charges will predictably inflate other terms of service—say, by imposing a higher fee on checking accounts, a slightly lower money market interest rate, a slightly higher fee on credit card charges, etc. Believe me, the average bank branch manager with three years on the job could figure out 1,000 ways to pad customer costs (or short client convenience) before breakfast.

Say the government really got tough, and sent in the Marines to audit and secure every one of these theoretical escape hatches, making damned sure no extra charges were imposed to compensate for the now illegal ATM fees. The banks could simply stop offering cash withdrawals at cooperating ATM locations. Airtight consumer protection: No service, no service charge.

While the price control on ATM fees (setting the transaction charge at a maximum of $0.00) is doomed to fail for consumers, it is almost guaranteed to succeed for consumer advocates. The "pass a law" fairy tale scenario fits perfectly: Evil bankers are robbing innocent men and women who are only trying to get their own money back! The fact that the proposed law will be easily sidestepped, thus resulting in customers' getting stuck with hidden charges unrelated to the costs their transactions incur, is simply not of interest to consumer advocates.

In essence, they receive a service charge on every regulatory solution dispensed from their public policy machine. The price they're charging, as well as the product delivered, should teach us all a little about outrageous gouging. ◆

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) teaches economics and public policy at the University of California, Davis.

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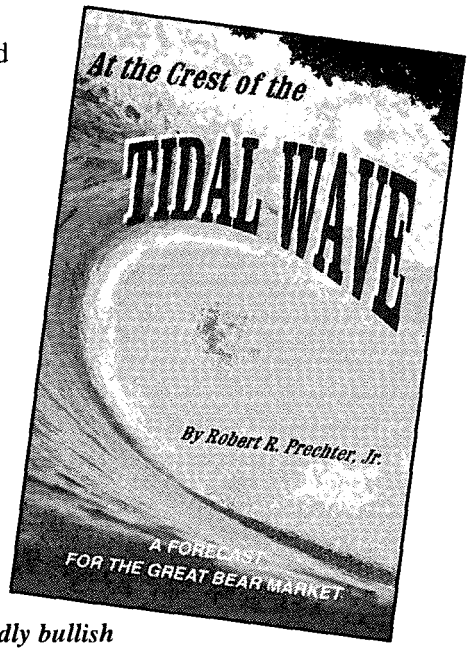

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